



**NOTICE OF REGULAR MEETING AGENDA  
LANCASTER CITY COUNCIL  
MUNICIPAL CENTER CITY COUNCIL CHAMBERS  
211 N. HENRY STREET, LANCASTER, TEXAS**



**Monday, June 26, 2017 - 7:00 PM**

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**CALL TO ORDER**

**INVOCATION:** Ministerial Alliance

**PLEDGE OF ALLEGIANCE:** Councilmember Stanley Jaglowski

**CITIZENS' COMMENTS:**

At this time citizens who have pre-registered before the call to order will be allowed to speak on any matter other than personnel matters or matters under litigation, for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.

**CONSENT AGENDA:**

Items listed under the consent agenda are considered routine and are generally enacted in one motion. The exception to this rule is that a Council Member may request one or more items to be removed from the consent agenda for separate discussion and action.

1. Consider approval of minutes from the City Council Regular Meeting held on June 12, 2017.
2. Consider a resolution approving the reallocation of Community Development Block Grant (CDBG) funds for Lindenwood Street Project.

**PUBLIC HEARING:**

3. Z17-03 Conduct a public hearing and consider a Specific Use Permit (SUP) to allow marble and granite fabrication in an existing building at 3300 Daniieldale Road, on approximately 1.6 acre tract of land and further described as Lots 25-29, Block A of Brownlee Park Addition, Lancaster, Dallas County, Texas.
4. M17-07 Conduct Public Hearing and Consider making a recommendation to the City Council to amend and/or repeal and replace the current Tree Preservation Ordinance Article 14.900 and Landscape Standards Article 14.800.

## **ACTION:**

5. Discuss and consider an ordinance amending the Code of Ordinances by amending Chapter 14 Titled " Offenses and Additional Provisions", Article 14.05 Titled "Smoking in Public Places and Places of Employment" setting forth regulations prohibiting smoking in all workplaces and public places located within the City; providing regulations for electronic cigarettes and liquid nicotine; providing for prohibition of smoking in certain outdoor areas; providing for posting of signs; providing for penalties for business or establishments not to exceed two thousand dollars (\$2,000).

## **EXECUTIVE SESSION:**

6. The City Council shall convene into closed executive session pursuant to Section §551.071(1)(A) to receive information on the following pending or contemplated litigation matters:
  - a. Cause No. DC-17-04372, Lakacia Turner v. Lancaster Police Department, et. al, filed in the 193rd District Court of Dallas County, Texas.
  - b. Correspondence from CTMGT Bear Creek, LLC requesting a Tex. Loc. Gov't Code § 212.904 appeal of any municipal infrastructure cost proportionality determinations incidental to the Bear Creek Subdivision Phase 3 Preliminary Plat.
7. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

## **ADJOURNMENT**

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EXECUTIVE SESSION: The City Council reserve the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the Texas Government Code to seek legal advice concerning such subject.

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ACCESSIBILITY STATEMENT: Meetings of the City Council are held in municipal facilities are wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

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PURSUANT TO SECTION 30.06 PENAL CODE (TRESPASS BY HOLDER WITH A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.

CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.

PURSUANT TO SECTION 30.07 PENAL CODE (TRESPASS BY HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A HANDGUN THAT IS CARRIED OPENLY.

CONFORME A LA SECCION 30.07 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO AL AIRE LIBRE CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO AL AIRE LIBRE.

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**Certificate**

**I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on June 22, 2017 @ 6:30 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.**



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Sorangel O. Arenas  
City Secretary

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

1.

**Meeting Date:** 06/26/2017

**Policy Statement:** This request supports the City Council 2015-2016 Policy Agenda

**Submitted by:** Sorangel O. Arenas, City Secretary

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#### **Agenda Caption:**

Consider approval of minutes from the City Council Regular Meeting held on June 12, 2017.

#### **Background:**

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held on June 12, 2017.

#### **Attachments**

June 12, 2017 Minutes

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## **MINUTES**

### **LANCASTER CITY COUNCIL REGULAR MEETING OF JUNE 12, 2017**

**The City Council of the City of Lancaster, Texas, met in a called Special session in the Council Chambers of City Hall on June 12, 2017 at 7:00 p.m. with a quorum present to-wit:**

#### **Councilmembers Present:**

Mayor Marcus E. Knight  
Carol Strain-Burk  
Stanley Jaglowski  
Marco Mejia  
Spencer W. Hervey Jr.  
Mayor Pro Tem Clyde C. Hairston  
Deputy Mayor Pro Tem Nina Morris

#### **City Staff Present:**

Opal Mauldin-Jones, City Manager  
Rona Stringfellow, Assistant City Manager  
Dori Lee, Human Resources Director  
Shane Shepard, Director of Economic Development  
Baron Sauls, Finance Director  
Sean Johnson, Managing Director of Quality of Life & Cultural Services  
Jermaine Sapp, Director of Equipment Services and Facilities  
Robert Franklin, Fire Chief  
Alton Dixon, Purchasing Agent  
Mark Divita, Airport Manager  
Jason B. Boulton, Assistant Police Chief  
David T. Ritter, City Attorney  
Sorangel O. Arenas, City Secretary

#### **Call to Order:**

Mayor Knight called the meeting to order at 7:00 p.m. on June 12, 2017.

#### **Invocation:**

Pastor Richardson gave the invocation.

#### **Pledge of Allegiance:**

Councilmember Strain-Burk led the pledge of allegiance.

#### **Proclamation:**

Mayor Knight proclaimed June 17th as "Juneteenth Celebration Day" and invited all citizens to join the City of Lancaster and the Best Southwest Cities of DeSoto, Duncanville, and Cedar Hill to co-sponsoring a Juneteenth Celebration on Saturday, June 17, 2017 located at the Lancaster Community Park.

Mayor Knight presented a proclamation to Upsilon Lambda Omega Chapter of Alpha Kappa Alpha announcing June 12th as "Alpha Kappa Alpha Sorority, Incorporated Day." Mayor Knight extended his gratitude and urged everyone in our community to celebrate and join in honoring Alpha Kappa Alpha Sorority, Inc. for their legacy of service and many accomplishments.

#### **Citizens' Comments:**

Aschelle Morgan, American Heart Association representative, 105 Declur Court, Dallas, Texas, spoke in favor of item 9.

**Consent Agenda:**

City Secretary Arenas read the consent agenda.

1. **Consider approval of minutes from the City Council Special Meeting held on May 8, 2017 and City Council Special Meeting held on May 15, 2017.**
2. **Consider a resolution approving the terms and conditions of the L-14 and L-26 ground leases at Lancaster Regional Airport.**
3. **Consider a resolution authorizing the City Manager to authorize on behalf of the City of Lancaster commercial and non-commercial leases, ground leases, and assignments and assumptions of ground leases at the Lancaster Regional Airport from June 12, 2017 to June 12, 2018.**
4. **Consider a resolution approving a negotiated settlement between the Atmos Cities Steering Committee ("ACSC") and Atmos Energy Corp., Mid-tex Division regarding the company's 2017 rate review mechanism RRM filings; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement.**
5. **Consider a resolution approving the terms and conditions of a Cooperative Agreement by and between the City of Lancaster and Dallas County to provide the Community Development Block Grant Program.**
6. **Consider a resolution authorizing the City Manager to sign all documents regarding the submittal of an application for the KaBoom! Playground Build Grant to replace the playground at Kidsquare Park.**
7. **Consider a resolution authorizing the purchase of (1) one 2016 Ford F450 AEV Type I demonstration ambulance from Professional Ambulance in an amount not to exceed one hundred and ninety thousand dollars (\$190,000).**

Councilmember Strain-Burk pulled item 6 and Councilmember Jaglowski pulled item 4 and 7.

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Councilmember Jaglowski to approve consent items excluding item 4, 6 and 7. The vote was cast for 7, 0 against.

4. **Consider a resolution approving a negotiated settlement between the Atmos Cities Steering Committee ("ACSC") and Atmos Energy Corp., Mid-tex Division regarding the company's 2017 rate review mechanism RRM filings; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement.**

Councilmember Jaglowski requested additional staff comments on item 4. City Manager Mauldin-Jones shared that item 4 is approving a negotiated settlement between Atmos Cities Steering Committee and Atmos Energy Corp. On March 1, 2017, Atmos made a filing requesting \$57.4 million additional revenues on a system-wide basis. Because the City of Dallas has a separate rate review process, exclusion of Dallas results in the Company requesting \$46.4 million from other municipalities. Staff recommends approval of the resolution as presented, and as recommended by ACSC.

**MOTION:** Councilmember Jaglowski made a motion, seconded by Mayor Pro Tem Hairston to approve consent item 4. The vote was cast for 7, 0 against.

6. **Consider a resolution authorizing the City Manager to sign all documents regarding the submittal of an application for the KaBoom! Playground Build Grant to replace the playground at Kidsquare Park.**

Councilmember Strain-Burk shared that the City is applying for a grant to replace the playground at Kidsquare Park. Also, if the grant is awarded, the City will be required to provide matching funds in an amount not to exceed \$9,000, as well as, engage 200 volunteers for the playground to be built.

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Morris to approve consent item 6. The vote was cast for 7, 0 against.

**7. Consider a resolution authorizing the purchase of (1) one 2016 Ford F450 AEV Type I demonstration ambulance from Professional Ambulance in an amount not to exceed one hundred and ninety thousand dollars (\$190,000).**

Councilmember Jaglowski requested additional staff comments on item 4. Director of Equipment Services and Facilities Sapp shared that item 7 is for the purchase of (1) one 2016 Ford F450 AEV Type I demonstration ambulance from Professional Ambulance in an amount not to exceed one hundred and ninety thousand dollars (\$190,000). The purchase of this equipment will allow for the replacement of a 2010 Ford F450 Horton ambulance with over 147,000 miles and 10,600 idling hours which is equivalent to approximately 450,000 miles. Approval of this purchase will improve efficiencies and operations in the fire department. With the purchase of a demonstration model, the City is able to place an ambulance in service within 45 days in comparison to a 9-12 month build. The demonstration model has low miles and minimum idling hours; however, it meets all of the current safety and operational standards and has manufacturer warranty and coverage. This purchase also realizes a substantial financial savings of approximately \$50,000.

**MOTION:** Councilmember Jaglowski made a motion, seconded by Mayor Pro Tem Hairston to approve consent item 7. The vote was cast for 7, 0 against.

**8. Discuss and consider a resolution accepting the Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2016.**

**MOTION:** Mayor Pro Tem Hairston made a motion, seconded by Councilmember Strain-Burk to approve item 8. The vote was cast for 7, 0 against.

**9. Discuss and consider an ordinance amending the Code of Ordinances by amending Chapter 14 Titled " Offenses and Additional Provisions", Article 14.05 Titled "Smoking in Public Places and Places of Employment" setting forth regulations prohibiting smoking in all workplaces and public places located within the City; providing regulations for electronic cigarettes and liquid nicotine; providing for prohibition of smoking in certain outdoor areas; providing for posting of signs; providing for penalties for business or establishments not to exceed two thousand dollars (\$2,000).**

Assistant City Manager Stringfellow shared that the purpose of this item is to amend Chapter 14 Offenses and Additional Provisions, Article 14.05, Smoking in Public Places and Places of Employment. The new ordinance will eliminate smoking in common areas, at city-sponsored events, city-owned facilities, places of employment and will not allow smoking in restaurants and certain outdoor areas. The intent of the ordinance is to reduce general public exposure to secondhand smoke and establish smoke free zones around city buildings and places of employment. Staff provided a proposed ordinance along with the current ordinance and the model ordinances from Smoke-Free Texas.

Deputy Mayor Pro Tem Morris suggested tabling the matter to a Work Session meeting on June 19, 2017.

**MOTION:** Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Hairston to table item 9 to June 19, 2017 Work Session Meeting and June 26, 2017 Regular Meeting. The vote was cast for 7, 0 against.

- 10. Consider an ordinance amending the Pleasant Run Estates Public Improvement District Five Year Service Plan, adopted by Ordinance No. 2016-08-15, as hereby amended by increasing the Pleasant Run Estates Public Improvement District Five Year Service Plan for fiscal year 2016/2017 by a total of \$11,950.**

Mayor Knight recused himself from item 10.

Assistant City Manager Stringfellow shared that the item is to request a budget amendment to the Pleasant Run Estates Public Improvement District Five Year Service Plan adopted by Ordinance Number 2016-08-15 by increasing the Landscape Repair and Maintenance line item by \$3,000, Miscellaneous Maintenance line item by \$1,900 and Contract Mowing line item by \$7,050 for a total of \$11,950 from their fund balance leaving a fund balance of \$2,842. In March of 2017 the PID Board approved the recommended changes. Staff recommends approval of the ordinance, as requested by the PID Advisory Board.

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Councilmember Hervey to approve item 10. The vote was cast for 6, 0 against.

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Hairston, to adjourn. The vote was cast 7 for, 0 against.

The meeting was adjourned at 7:57 p.m.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Marcus E. Knight, Mayor

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

2.

**Meeting Date:** 06/26/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Healthy, Safe & Vibrant Community  
Sound Infrastructure  
Quality Development

**Submitted by:** Rona Stringfellow, Asst.City Manager Jim Brewer, Public Works Director

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### **Agenda Caption:**

Consider a resolution approving the reallocation of Community Development Block Grant (CDBG) funds for Lindenwood Street Project.

### **Background:**

CDBG funds are administered through Dallas County and may only be used on projects that eliminate blight, eliminate a community threatening condition or primarily benefit low/moderate income residents.

The primary objective of the program is to develop sustainable urban communities that meet the public service and housing needs of low and moderate income households. Federal rules allow each community to tailor its program to address specific local needs.

The City Council renewed the CDBG master agreement on June 10, 2017 extending the partnership until 2020. At the June 13, 2016 City Council meeting, Council approved the submission of Lindenwood Drive, from Dewberry to Johns Street and Percy Street from Cedardale Road to Lyle Street as the primary projects. Dallas County received bids and it was determined that additional funds were necessary in order for the project to proceed.

### **Operational Considerations:**

The current project involves the reconstruction of Lindenwood Drive, including curb and gutter, from about Johns Avenue to Dewberry Boulevard (See attached map). The street length is 1,000 feet. There are twenty-two homes abutting the street and 64% of the residents are considered to be of low/moderate income (According to Dallas County survey).

To construct this project an additional \$110,906 is needed. Dallas County is proposing to utilize previously allocated money \$52,851.20 from prior years as well as the \$58,054.80 allocated to Percy Street reconstruction to make up the difference. The proposed reallocations, which have been developed in conjunction with the City of Lancaster, will produce a total project budget of \$210,000.

Without these reallocations, the City will either need to find another source of funding for the project or delay the project until October 2018 when additional CDBG funding will be provided to the City.

### **Legal Considerations:**

The City Attorney has reviewed the resolution and approved as to form.

**Public Information Considerations:**

This item is being considered at a regular meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

Because Percy Street funds are being reallocated, this project will be delayed until October 2018 when additional CDBG funding will be provided to the City.

**Options/Alternatives:**

1. City Council may approve the resolution, as presented.
2. City Council may reject the resolution.

**Recommendation:**

Staff recommends approval of the resolution as presented.

**Attachments**

Resolution

Exhibit A

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AMENDMENT NO. 1 TO THE DALLAS COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECT IMPLEMENTATION AGREEMENT CITY OF LANCASTER STREET RECONSTRUCTION – CURB AND GUTTER PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AMENDMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City had on July 9, 2015 entered into the Dallas County CDBG Project Implementation Agreement Lancaster Street Reconstruction – Curb and Gutter Project; and

**WHEREAS**, the City of Lancaster desires to amend the Dallas County Community Block Grant Project Implementation Agreement to reallocate funds from the Percy project to the Lindenwood curb and gutter project; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:**

**SECTION 1.** The City Council hereby approves Amendment No. 1 to the Community Development Block Grant Project Implementation Agreement dated July 9, 2015, as amended, which is attached hereto and incorporated herein by reference as Exhibit "A" by revising Section 5. Project Budget to reflect allocation of \$536,732.15.

**SECTION 2.** The City Manager of the City of Lancaster, Texas, is hereby authorized to execute said agreement.

**SECTION 3.** Any prior Resolutions of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

**SECTION 4.** Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

**SECTION 5.** This Resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 26th day of June, 2017.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

COUNTY OF DALLAS       §  
                                     §  
STATE OF TEXAS       §

**AMENDMENT NO. 1 TO THE DALLAS COUNTY  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)  
PROJECT IMPLEMENTATION AGREEMENT  
LANCASTER STREET RECONSTRUCTION – CURB & GUTTER PROJECT  
("Agreement")**

**BETWEEN COUNTY OF DALLAS, TEXAS  
("County")**

**AND CITY OF LANCASTER, TEXAS  
("City")**

**WHEREAS**, on July 9, 2015, City entered into the following agreement with County: Dallas County CDBG Project Implementation Agreement Lancaster Street Reconstruction- Curb & Gutter Project (hereinafter referred to as the "Agreement"); and

**WHEREAS**, City was allocated CDBG funds in the following amounts thus far; Thirty Six Thousand Two Hundred Twenty-Seven and 55/100 Dollars (\$36,227.55) in FY2011 funds; Fifty Five Thousand Seven Hundred Eighty-Two and 60/100 Dollars (\$55,782.60) in carryover funds from FY2012; One Hundred Seventeen Thousand Eight Hundred Fifty-Nine and 00/100 Dollars (\$117,859.00) in FY2013 funds; One Hundred Sixteen Thousand Eight Hundred Sixty-Three and 00/100 Dollars (\$116,863.00) in FY2014 funds; and Fifty Two Thousand Eight Hundred Fifty-One and 20/100 Dollars (\$52,851.20) in reallocated FY2008 demolition funds; and

**WHEREAS**, City desires to continue project by utilizing an additional Ninety Nine Thousand Ninety-Four and 00/100 Dollars (\$99,094.00) in FY2016 CDBG funds authorized in Court Order 2016-0913 and Fifty Eight Thousand Fifty-Four and 80/100 Dollars (\$58,054.80) in reallocated FY2016 CDBG funds from the Percy Street CDBG Project authorized in Court Order 2017-0749; and

**WHEREAS**, this amount, Five Hundred Thirty Six Thousand Seven Hundred Thirty-Two and 15/100 Dollars (\$536,732.15), represents the total allocation from all CDBG sources and shall hereinafter be referred to as the "Revised Not to Exceed Amount" for the CDBG funded portion of this Project.

**NOW THEREFORE**, by execution of this Amendment No.1, the Agreement is amended hereby with respect to the items and features described below to:

**I.       EFFECT OF AMENDMENT:**



By execution of this Amendment No.1, the Agreement is amended hereby with respect to the Articles described below. No other sections, provisions, clauses, or condition of the Agreement are waived or changed hereby, and they shall remain in full force and effect throughout the term of the Agreement and any duly authorized extensions.

## **II AMENDED PROVISIONS:**

- A. Section 5 entitled Project Budget Subsection A is amended by deleting the existing language in its entirety and substituting the following:

The County will not authorize any CDBG expenditures in excess of the Revised Not to Exceed Amount, Five Hundred Thirty Six Thousand Seven Hundred Thirty-Two and 15/100 Dollars (\$536,732.15), or as otherwise directed by HUD. In addition, the City will be responsible for any costs that are incurred by the City and disallowed by the County or HUD.

## **III ACCEPTANCES:**

By their signatures below, the representatives of County and City executing this Amendment No. 1 represent that they are duly authorized to execute this Amendment No.1 on behalf of their party and to validly bind their party to all terms, conditions, performances and provisions set forth herein. The duly authorized representatives of County and City accept the terms of this Amendment No. 1 in full.

(This portion of the Implementation Agreement intentionally left blank)

EXECUTED this the 26th day of June, 2017.

COUNTY:

CITY:

  
Clay Lewis Jenkins  
County Judge

\_\_\_\_\_  
Opal Mauldin- Jones  
City Manager

Recommended:


BY:   
Rick Loessberg  
Director, Planning and Development

Approved to as Form\*:

DALLAS COUNTY

FAITH JOHNSON

DISTRICT ATTORNEY

BY:   
Randall Miller  
Assistant District Attorney

*\*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).*

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

3.

**Meeting Date:** 06/26/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Healthy, Safe & Vibrant Community  
Quality Development

**Submitted by:** Bester Munyaradzi, Senior Planner

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#### **Agenda Caption:**

Z17-03 Conduct a public hearing and consider a Specific Use Permit (SUP) to allow marble and granite fabrication in an existing building at 3300 Danieldale Road, on approximately 1.6 acre tract of land and further described as Lots 25-29, Block A of Brownlee Park Addition, Lancaster, Dallas County, Texas.

#### **Background:**

1. **Location and Size:**

The property is located at 3300 Danieldale Road and is approximately 1.6 acres in size.

2. **Current Zoning:**

The subject property is currently zoned CH-Commercial Highway.

3. **Adjacent Properties:**

North: CH-Commercial Highway (vacant)  
South: CH-Commercial Highway (vacant)  
East: CH-Commercial Highway (vacant)  
West: CH-Commercial Highway (Lancaster Tire Shop)

4. **Consistency with the Comprehensive Plan:**

The Comprehensive Plan identifies this site as Suburban Mixed-Use Center. The primary land use envisioned for areas designated as Suburban Mixed-Use Center is regional retail, urban residential, senior housing, hotels, professional office, restaurants, multi-tenant commercial, live/work/shop units with secondary land uses being civic, institutional, and parks uses. Although the SUP is for a single-tenant, the proposed use falls within Commercial land use, therefore the proposed use is consistent with the Future Land Use Map of the Comprehensive Plan.

5. **Approval Authority:**

Upon recommendation by the Planning and Zoning Commission, the City Council will conduct a public hearing and render a final decision for this item at their June 26, 2017 regular meeting.

#### **Operational Considerations:**

The applicant is requesting a Specific Use Permit for a marble and granite fabrication use. Specifically, the shop would provide custom marble, granite, quartz and soapstone counter tops to their customers. The plan for the building is to have a front showroom in what is now the office and break room area that currently extends across the front of the building. Materials would be stocked in the building towards the back; measurements taken at the job site; materials cut and finished at the building and then shipped and installed at the customer job site. The SUP is specifically for the fabrication part of this use. The

showroom portion of the use is permitted by right according to the Zoning Land Use Table. Attached is a brochure of the applicant's business.

The current use of the property is a bumper shop. There is a large carport storage on the east side of the site and an accessory storage building behind the primary structure. The owners currently have no plans for these structures. The property is surrounded by an existing 6' chain link fence with vinyl slats. The front facade facing Daniieldale is composed of brick and the roof is composed of metal. The owners plan to paint the building within a year and may erect a simple sign on the building that will identify the company. The owners have agreed to install sufficient parking and a fire lane for the building and to install xeriscape landscaping to enhance the site, as depicted on the site and landscape plan.

A Specific Use Permit is required for any use identified in the Land Use Table as requiring one and for uses with standards where the standards are not being met, unless otherwise set out. Specific Use Permits allow the consideration of public welfare, operation, location, arrangement, and construction of any use for which a Specific Use Permit is sought. The proposed marble and granite processes will be entirely conducted inside the building. The applicant is not proposing any outside storage. As such, the proposed use will not have any adverse effects on adjacent and surrounding properties. Therefore staff recommends approval of the SUP request.

**Public Information Considerations:**

Property owner notices were sent on June 12, 2017 to properties within 200 feet of the subject site. Newspaper notices were published on June 14, 2017 in the Focus Daily News. Staff received six letters in support and one letter in opposition of this SUP. This public hearing is being held at a meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

**Options/Alternatives:**

1. Approve the request as presented.
2. Deny the request as presented.

**Recommendation:**

This item was considered at the Planning and Zoning Commission Meeting on June 6, 2017 and the Commission recommended approval. Staff concurs with the Commission.

**Attachments**

Ordinance  
Draft P&Z Minutes  
Location Map  
Landscape Plan  
Site Plan  
Elevation Plan  
Pictures of the Site  
Brochure  
Letters in Support

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## **ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING ORDINANCE NO. 2016-10-27, THE COMPREHENSIVE ZONING ORDINANCE AND MAP OF THE CITY OF LANCASTER, AS AMENDED, BY GRANTING A SPECIFIC USE PERMIT FOR A MARBLE AND GRANITE FABRICATION USE TO BE LOCATED ON APPROXIMATELY 1.6 ACRES OF LAND SITUATED IN THE BROWNLEE PARK ADDITION IN THE CITY OF LANCASTER, DALLAS COUNTY, TEXAS, MORE GENERALLY DESCRIBED AS BEING LOCATED AT 3300 DANIELDALE ROAD AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT "A", ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES; PROVIDING FOR SPECIAL CONDITIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster has received a request for a zoning district change; and

**WHEREAS**, the Planning and Zoning Commission and the City Council of the City of Lancaster, in compliance with the laws of the State of Texas with references to the granting of zoning classification changes, have given the requisite notices by publication and otherwise, and have held due hearings and afforded a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof; and

**WHEREAS**, the City Council of the City of Lancaster is of the opinion and finds that the Comprehensive Zoning Ordinance and Map should be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:**

**SECTION 1.** That on Zoning Case No. Z17-03, the Comprehensive Zoning Ordinance, the Comprehensive Plan and Map of the City of Lancaster, be hereby amended to grant a Specific Use Permit for a marble and granite fabrication use to be located on approximately 1.6 acres of land generally located at 3300 Danieldale Road, and being more particularly described in Exhibit "A", attached hereto and made a part hereof for all purposes.

**SECTION 2.** Ordinance Number 2016-10-27, the Zoning Ordinance of the City of Lancaster, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

**SECTION 3.** If any article, paragraph, subdivision, clause or provision of this ordinance or the Comprehensive Zoning Ordinance, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this ordinance as a whole or any part or provision thereof, or of the Comprehensive Zoning Ordinance, as amended hereby, other than the part so declared to be invalid or unconstitutional.

**SECTION 4.** Any person, firm or corporation violating any of the provisions of this ordinance or the Comprehensive Zoning Ordinance of the City of Lancaster, Texas, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Lancaster, Texas, shall be subject to a fine not to exceed the sum of Two Thousand (\$2,000.00) dollars for each offense, and each and every day such offense shall continue shall be deemed to constitute a separate offense.

**SECTION 5.** This ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 26th day of June, 2017.

**ATTEST:**

**APPROVED:**

---

Sorangel O. Arenas, City Secretary

---

Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

---

David T. Ritter, City Attorney

Exhibit A  
Legal Description

Being a tract of land situated in the W.M. Howerton Survey, Abstract No. 559, City of Lancaster Dallas County, Texas being all of the remainder of Lots 25,26,27,28 and 29 Block A, Brownlee Park Addition, an addition to the City of Lancaster according to the plat thereof recorded in Volume 14, Page 71.

5. Z17-03 Conduct a Public Hearing and consider a Specific Use Permit (SUP) to allow marble and granite fabrication in an existing building at 3300 Danieldale Road, on approximately 1.6 acre tract of land and further described as Lots 25-29, Block A of Brownlee Park Addition, Lancaster, Dallas County, Texas

Planner Emma Chetuya read the staff report into the record.

Peter Kavanaugh, 1620 Handley, Dallas Texas, spoke on behalf of the applicant to further explain the application.

**ACTING CHAIR OPENED THE PUBLIC HEARING**

**A MOTION WAS MADE BY COMMISSIONER AGUILAR AND SECONDED BY COMMISSIONER JOHNSON TO CLOSE THE PUBLIC HEARING.**

**AYES: HILL, JOHNSON, AGUILAR**

**NAYS:**

**THE MOTION CARRIED 3 to 0.**

**A MOTION WAS MADE BY COMMISSIONER AGUILAR AND SECONDED BY COMMISSIONER JOHNSON TO APPROVE Z17-03 A SPECIFIC USE PERMIT (SUP) TO ALLOW MARBLE AND GRANITE FABRICATION IN AN EXISTING BUILDING AT 3300 DANIELDALE ROAD, ON APPROXIMATELY 1.6 ACRE TRACT OF LAND AND FURTHER DESCRIBED AS LOTS 25-29, BLOCK A OF BROWNLEE PARK ADDITION, LANCASTER, DALLAS COUNTY, TEXAS**

**AYES: HILL, JOHNSON, AGUILAR**

**NAYS:**

**THE MOTION CARRIED 3 to 0**

**DRAFT**





City of Lancaster

# 3300 Danieldale Rd

## Zoned CH (Commercial Highway)

+

Fire Hydrants

Storm Sewer Lines

Sewer Lines

Water Lines

2ft Contours

Parcels

FEMA 100yr Floodplain

0

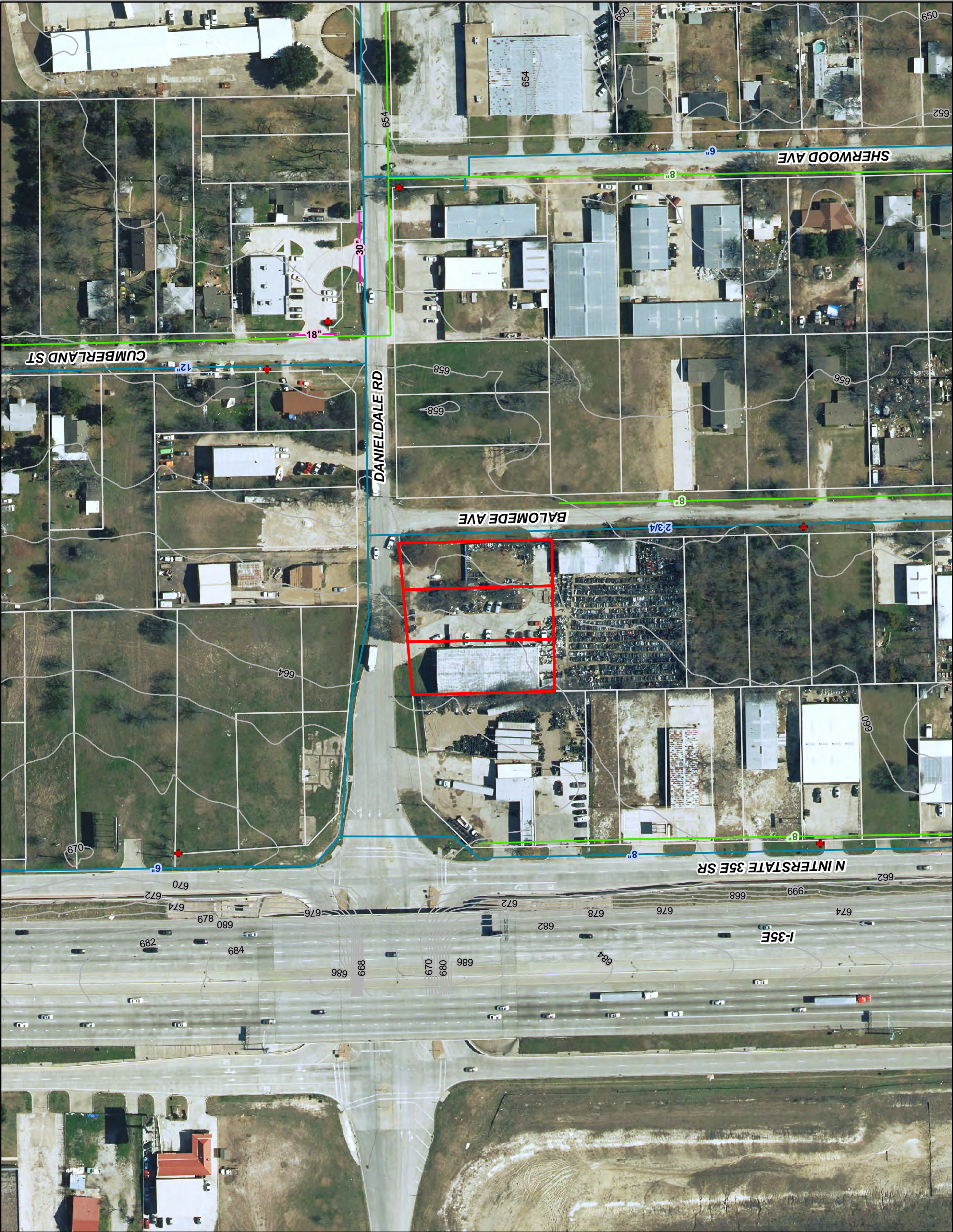
50

100

200

Feet

date: 05/22/2017

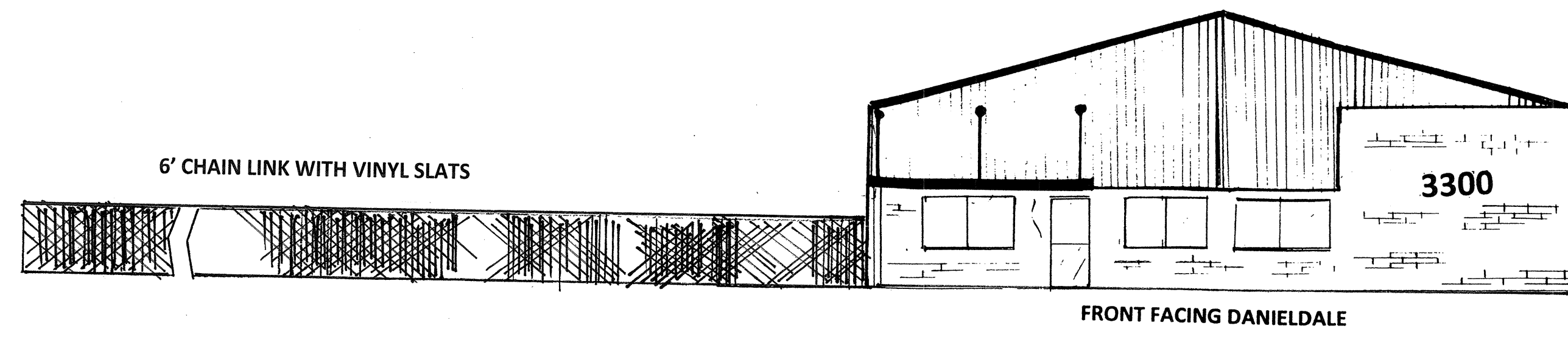




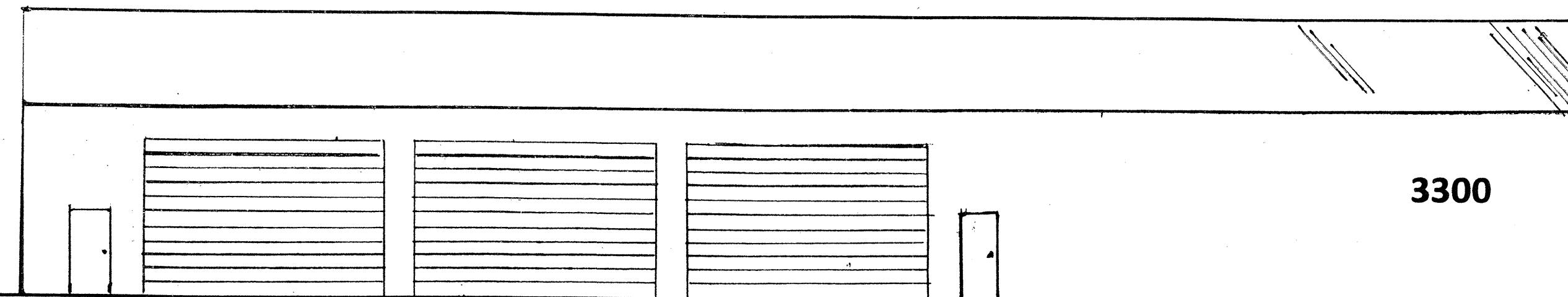








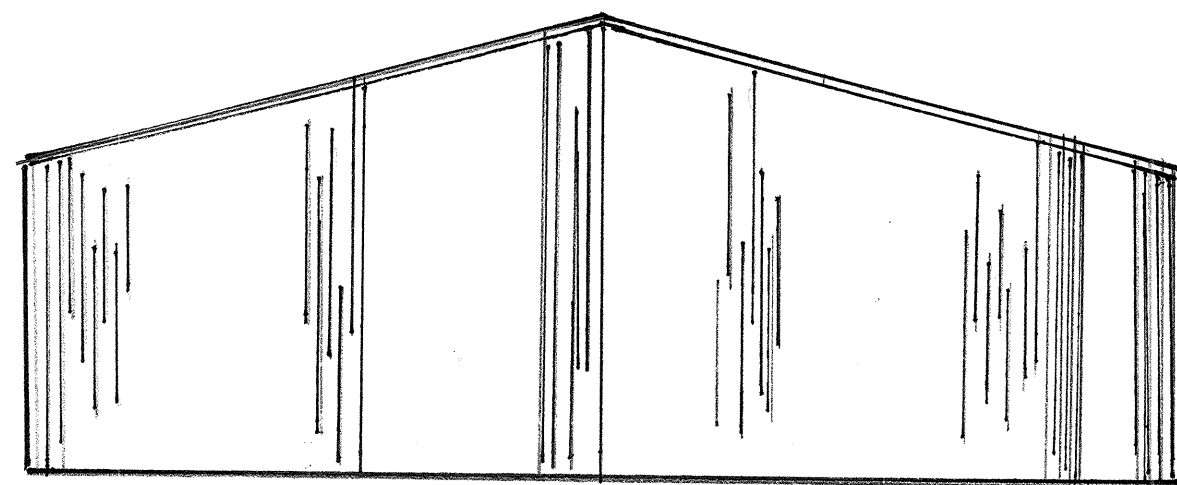
FRONT FACING DANIELDALE



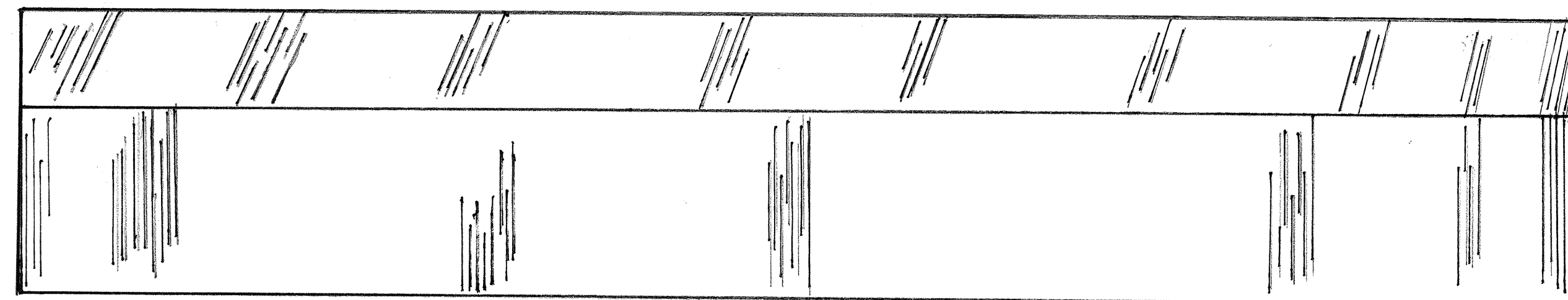
SIDE FACING BALOMEADE

3300 DANIELDALE

1" = 10'



SOUTH FAÇADE (REAR)



WEST FAÇADE

VEGA MARBLE AND GRANITE

3300 DANIELDALE ROAD



North face of building





**North face of building**





**North entrance into the facility**





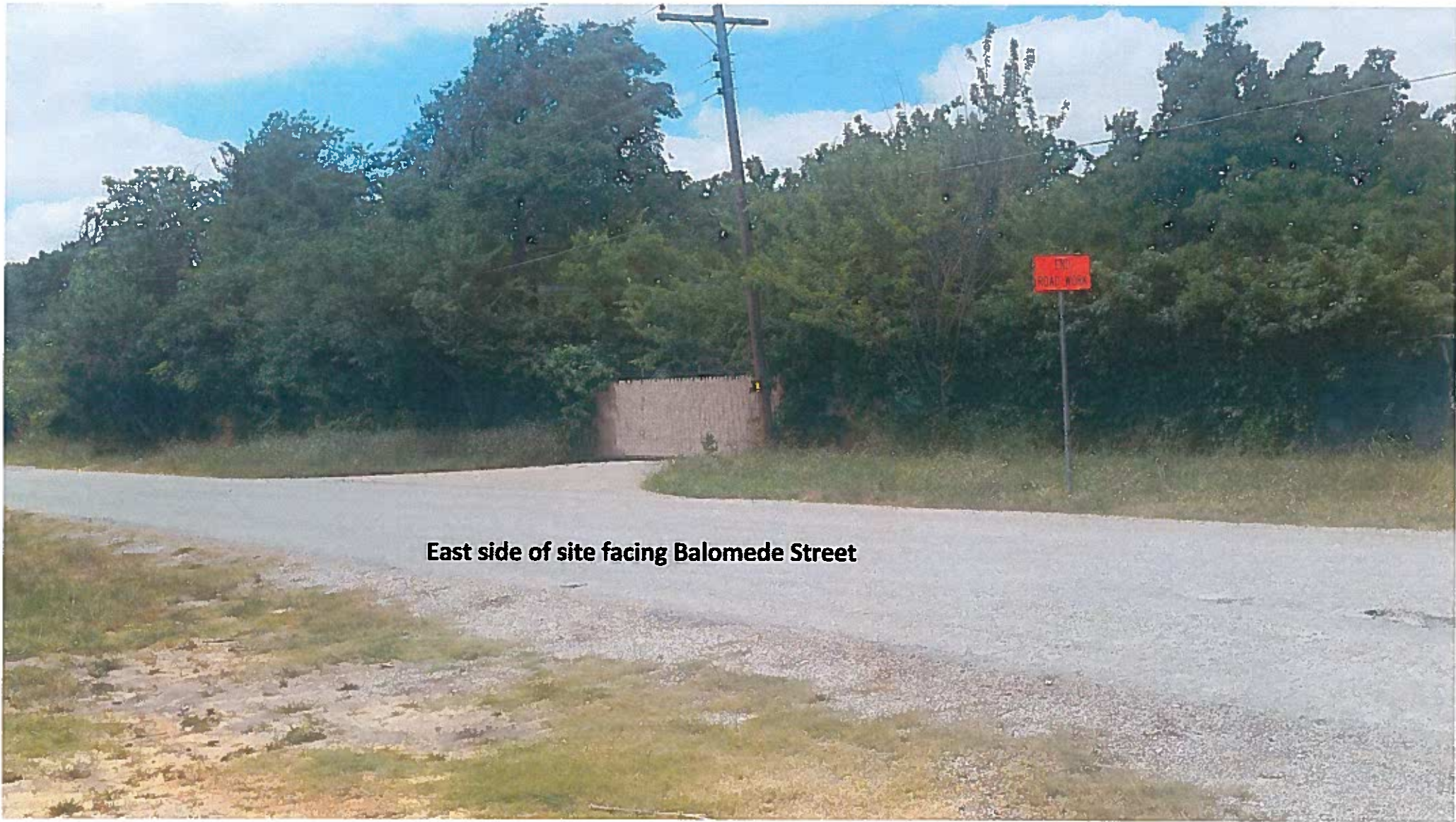
Existing shed attached to the south side of the principal building



Existing large carport







**East side of site facing Balomede Street**

**VEGA**  
MARBLE+  
GRANITE

(index.html)



## ABOUT US

Vega Marble & Granite is a family owned and operated business based in Dallas, TX that specializes in the fabrication and installation of all types of Granite, Marble, Onyx, Quartz & Solid Surfaces. We have been in the Marble & Granite business for over 17 years and have the knowledge and expertise to take on any type of project, both residential and commercial. We service all of DFW and surrounding areas. We offer services for your Kitchen Countertops, Bathroom Vanities, Showers, Jacuzzis, Fireplace, Outside Kitchens, Stair Cases & Commercial Jobs. Our service is guaranteed and our goal is complete customer satisfaction while offering the best prices.



## THE PROCESS IS SIMPLE!

1. We come out to your home to give you a FREE ESTIMATE, we then encourage you to travel to the plant to personally pick out the slab of your choice, that way you know what you are getting and can shop around for the pricing and style that fits your budget. If you need help finding a great retail plant, we have many high quality referrals for you to choose from.
2. We then fabricate the slab and install it to your exact design. We do everything from beginning to end, including demolition.



- 469.231.3006 / 214.909.3337
- [vegagranite@gmail.com](mailto:vegagranite@gmail.com) (<mailto:vegagranite@gmail.com>)



(gallery-2.html)

## WHAT WE DO

Here at Vega Marble & Granite, we don't settle for any less than perfection. With over 17 years of experience and many satisfied customers all over the DFW and surrounding areas, we guarantee that you'll fall in love with your home all over again! We specialize in fabricating and installing your MARBLE, GRANITE, ONYX or QUARTZ design from start to finish using only the highest quality products and precision. [CLICK HERE TO READ MORE!](#) (about.html)

## WE OFFER SERVICES FOR YOUR...

- Kitchen Countertops
- Bathroom Vanities
- Showers
- Jacuzzi's
- Fireplaces
- Outside Kitchens
- Stair Cases
- Commercial Jobs

## WHAT OUR CUSTOMERS ARE SAYING...

"Jaime and his team were **amazing!** They were very professional and did a wonderful job on my kitchen."

- Sarah T. , Dallas, TX

"I get so many compliments on my bathroom now thanks to the **awesome** job Vega Marble & Granite did. Will definatly be using them again!"

- Robert P. , Plano, TX

"I can't believe I waited this long to update my kitchen! What a difference marble makes. Thanks Vega Marble & Granite!"

- John F. , Garland, TX

- 469.231.3006 / 214.909.3337
- [vegagranite@gmail.com](mailto:vegagranite@gmail.com) (mailto:vegagranite@gmail.com)



## City of Lancaster Planning Division



### NOTICE OF PUBLIC HEARING

**TO:** Property Owner

**RE:** Case No. - Z 17-03: to conduct a public hearing and consider a Specific Use Permit to allow marble and granite fabrication.

**LOCATION:** The property is located at 3300 Daniieldale Road, an approximately 1.6 acre tract of land currently zoned Commercial Highway (CH) further described as Lots 25-29, Block A of Brownlee Park Addition, Lancaster, Dallas County, Texas.

**EXPLANATION OF REQUEST:** The Applicant requests to rezone this property for the purpose of developing a Marble and Granite fabrication shop.

- ☒ I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
- ☐ I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

**COMMENTS:**

*This is a growing company with a good reputation. I feel like it will be a good business for Lancaster.*

**SIGNATURE:**

**ADDRESS:**

*Alan Swadlow*  
*4433 Lund Rd 905 - Paris Tx*

Your written comments are being solicited in the above case. Additional information is available in the Department of Planning at 700 E. Main. The Planning and Zoning Commission will hold a public hearing and take action on the above case at their meeting on **Tuesday, May 2, 2017 at 7:00 pm**. The City Council will hold a public hearing and take action on the above case at their meeting on **Monday, June 12, 2017 at 7:00 pm**. Meetings are typically held in the City Council Chambers, City of Lancaster Municipal Center, 211 N. Henry Street, Lancaster, Texas.

Please legibly respond in ink. If the signature and/or address are missing, your comments will not be recorded. Your response must be received in the Planning Division by **5 p.m. on Wednesday, April 26, 2017** for your comments to be recorded for the Planning and Zoning Commission's meeting. Responses received after that time will be forwarded to the Commission at the public hearing.

If you have any questions concerning this request,  
please contact the Planning Division  
Phone 972-218-1315  
FAX 972-275-1862

**RETURN BY FAX OR MAIL**

City of Lancaster  
Planning Division  
211 N Henry St  
Lancaster, TX 75146-0940



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☐ I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:

☐ I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

**COMMENTS:** *Much better use of this property.  
It will be a asset for Lancaster.*

**SIGNATURE:**

**ADDRESS:**

*James H. Austin  
7949 Bromley Gibson Rd  
Mansfield, TX 76063*

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- ☒ I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
- ☐ I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

**COMMENTS:** I feel as if this company, Vega, is a thriving  
company run by good people who make quality cabinet tops.  
Vega would be an asset to the City of Lancaster.

**SIGNATURE:**

**ADDRESS:**

Gary Talley  
5316 Old Buena Vista Rd.  
Waxahatchie, TX 75167

Your written comments are being solicited in the above case. Additional information is available in the Department of Planning at 700 E. Main. The Planning and Zoning Commission will hold a public hearing and take action on the above case at their meeting on **Tuesday, May 2, 2017 at 7:00 pm.** The City Council will hold a public hearing and take action on the above case at their meeting on **Monday, June 12, 2017 at 7:00 pm.** Meetings are typically held in the City Council Chambers, City of Lancaster Municipal Center, 211 N. Henry Street, Lancaster, Texas.

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**EXPLANATION OF REQUEST:** The Applicant requests to rezone this property for the purpose of developing a Marble and Granite fabrication shop.

☒ I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:  
☐ I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

**COMMENTS:** Much better use of this property that  
was originally zoned Light Industrial.

**SIGNATURE:**

**ADDRESS:**

Tony Talley  
P.O. Box 1319, Ctr. Worth, TX  
76101

Your written comments are being solicited in the above case. Additional information is available in the Department of Planning at 700 E. Main. The Planning and Zoning Commission will hold a public hearing and take action on the above case at their meeting on **Tuesday, May 2, 2017 at 7:00 pm.** The City Council will hold a public hearing and take action on the above case at their meeting on **Monday, June 12, 2017 at 7:00 pm.** Meetings are typically held in the City Council Chambers, City of Lancaster Municipal Center, 211 N. Henry Street, Lancaster, Texas.

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Lancaster, TX 75146-0940

## CITY OF LANCASTER'S BOARDS AND COMMISSIONS

### City Council Regular Meeting

4.

**Meeting Date:** 06/26/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Healthy, Safe & Vibrant Community  
Quality Development

**Submitted by:** Bester Munyaradzi, Senior Planner

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### **Agenda Caption:**

M17-07 Conduct Public Hearing and Consider making a recommendation to the City Council to amend and/or repeal and replace the current Tree Preservation Ordinance Article 14.900 and Landscape Standards Article 14.800.

### **Background:**

As prescribed in the City Council rules and procedures as amended September 2016, Section D. City Council Agenda Process Subsection 1.b., Councilmember Marco Mejia requested that this item be on the agenda for the purpose of receiving input from City Council and the Planning & Zoning Commission regarding amendments to the various sections of the code addressing tree conservation and landscaping. At the December 19, 2016 City Council Work Session, Council received a presentation from Stantec regarding the Lancaster Tree Preservation Ordinance. Council requested staff to secure the services of an Arborist to provide information regarding the species of trees on the City's approved tree list and to have further discussion regarding the Tree Preservation Ordinance. Staff secured Arborist Matt Grubisich, Director of Operations and Urban Forestry for the Texas Trees Foundation.

On February 6, 2017, Mr. Grubisich made a presentation to the City Council regarding information on the species of trees on the City approved tree list and to have further discussion regarding the Tree Preservation Ordinance. Mr. Grubisich highlighted the need to amend the entire Tree Preservation Ordinance and adopt a new Tree Preservation ordinance that will enhance and promote the health and economic viability of the City. The City entered into a professional services agreement with Mr. Grubisich to complete an analysis and review Article 14.800, "Landscape Standards" and Article 14.900 of the Lancaster Development Code and to consider a new Tree Conservation and Landscape Ordinance, repealing and replacing all other ordinances in conflict, which will provide comprehensive regulations for protected trees, streetscapes, conservation, landscaping and related maintenance of the urban and arboreal environment.

On April 25, Mr. Grubishich and City staff held a Town Hall meeting to receive public input on the adoption of a new Tree Conservation and Landscape Ordinance. Furthermore, On May 1, 2017, Mr. Grubishich made a presentation to the City Council and the Planning & Zoning Commission at a joint work session to receive input regarding the proposed new Tree Conservation and Landscape Ordinance.

On June 6, there was a public hearing meeting by the Planning and Zoning Commission where Mr. Grubishich presented the proposed changes to the Commission. The Planning and Zoning Commission recommended approval of the proposed amendments to Article 14.800 as presented and recommended approval of the proposed amendments to article 14.900 as presented with the following modifications:

14.901 Option B selected with modification to the language; in the definitions sections, a modification to

language regarding heritage tree and historic tree definitions.

14.903 Agriculture owners portion to be considered at the June 20, 2017 meeting.

14.904 Tree survey submittal requirements - removal of registered surveyor

14.907(B) Amend Planning and Development Services Director to read Parks and Recreation Director.

14.908 Reference to placing replacement trees on other private property needs to be reworded to say other suitable locations where replacement trees be replanted.

On June 20th, there was a public hearing by the Planning and Zoning Commission where staff presented the proposed changes. The Planning and Zoning Commission recommended approval of 14.900 and 14.800 as submitted for review with the revisions to the language regarding 14.903(d) as presented.

**Operational Considerations:**

The intent of this agenda item is to consider making a recommendation to the City Council to amend and/or repeal and replace the current Tree Preservation Ordinance Article 14.900 and Landscape Standards Article 14.800 in an effort to uphold the Tree Preservation Ordinance purpose to promote site planning which furthers the preservation of trees and natural areas; to protect trees during construction; to facilitate site design and construction; contribute to the long-term viability of existing trees; and to prohibit clear cutting of trees. The City Council and the Planning & Zoning Commission have held work sessions regarding amendments to the various sections of the code addressing tree conservation and landscaping since December 2016. The City secured a Consultant and an Arborist services to assist in the revision process. Public input and work session meetings led to the (attached) proposed amendments leading to the Tree Conservation Ordinance and Landscape Regulations and Standards Ordinance. The proposed new Tree Conservation Ordinance and Landscape Regulations and Standards Ordinance will repeal and replace all other ordinances in conflict, provide comprehensive regulations for protected trees, street scapes, conservation, landscaping and related maintenance of the urban and arboreal environment.

Proposed amendments include but are not limited to the following:

- Granting the Development Services Director charge over the implementation and oversight of the Tree Conservation and Landscape Regulations and Standards Ordinances
- Ordinance title changes from Tree Preservation to Tree Conservation and Landscape Standards to Landscape Regulations and Standards Ordinances
- Tree classification and unprotected tree list
- Tree conservation options
- Transplanting procedures
- Tree mitigation formula
- Tree mitigation strategies, alternatives, planting and placement standards
- Landscape exceptions
- Soil and planting requirements among others

Attached, please find the proposed amendments to the Tree Preservation and Landscape Ordinances and the explanation notes for your review, comments and recommendation to the City Council.

**Public Information Considerations:**

Notification for this public hearing item appeared in the Focus Daily Newspaper on May 17, 2017. This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

**Options/Alternatives:**

1. Recommend approval of the request as presented in accordance with Planning & Zoning Commission recommendations.
2. Recommend approval with modifications and state those modifications.
3. Postpone consideration of this item.
4. Recommend denial of the request and direct staff.

**Recommendation:**

The Planning & Zoning Commission recommended approval of the new Landscape Regulations & Standards Article 14.800 and Tree Conservation Article 14.900.

**Attachments**

Ordinance - Tree Conservation and Landscape Regulations & Standards as recommended by P&Z  
Article 14.800 - Landscape Regulations and Standards - Original Recommendations From the Consultant

Article 14.900 Tree Conservation - Original Recommendations from the Consultant

P&Z June 20, 2017 Draft Minutes

P&Z June 6, 2017 Minutes

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**CITY OF LANCASTER, TEXAS**

**ORDINANCE NO. 2017-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY REPEALING EXISTING ARTICLE 14.800, "LANDSCAPE STANDARDS," OF CHAPTER 14, THE LANCASTER DEVELOPMENT CODE, AND REPLACING IT WITH A NEW ARTICLE 14.800, "LANDSCAPE REGULATIONS AND STANDARDS"; REPEALING EXISTING ARTICLE 14.900, "TREE PRESERVATION," OF CHAPTER 14, THE LANCASTER DEVELOPMENT CODE, AND REPLACING IT WITH A NEW ARTICLE 14.900, "TREE CONSERVATION"; PROVIDING FOR SEVERABILITY, SAVINGS AND REPEALING CLAUSES; PROVIDING FOR PENALTIES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

**WHEREAS**, the City Council has determined that in order to preserve and enhance the City as a desirable community in which to live and do business, a pleasing, visually attractive environment is of the foremost importance; and

**WHEREAS**, the City Council, possessing the full power of self-government, as authorized by the Texas Constitution and the City's duly adopted Charter, has determined that the adoption of new landscape regulations and tree conservation regulations is in the best interests of the citizens of the City and will promote the public health, safety and general welfare; and

**WHEREAS**, the City Council further has determined that Chapter 14, the Lancaster Development Code, of the Code of Ordinances should be amended, as provided herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, THAT:**

**SECTION 1**

All of the above findings are hereby found to be true and correct and are hereby incorporated into the body of this Ordinance as if fully set forth herein.

**SECTION 2**

From and after the effective date of this Ordinance, existing Article 14.800, "Landscape Standards," of Chapter 14, the Lancaster Development Code, is repealed in its entirety and replaced with a new Article 14.800, "Landscape Regulations and Standards," to read as follows:

## **“ARTICLE 14.800 LANDSCAPE REGULATIONS AND STANDARDS**

### **Sec. 14.801 Purpose**

(a) Purpose. Landscaping is accepted as adding value to property and is in the interest of the general welfare of the City. The City Council of the City of Lancaster has declared that a goal for the City is to provide an optimal quality of life for all citizens of Lancaster by improving the appearance of the City through increased public and private landscaping and reducing litter.

(b) Intent. These landscaping regulations provide standards and criteria for new landscaping with live plant material, and are intended to promote the value of property, enhance the general welfare, improve the physical appearance of the City, and enhance the community's ecological, environmental and aesthetic qualities. It is further the intent of this Article:

- To establish requirements for the installation and maintenance of landscaping elements and other means of site improvement on existing and newly developed property in order to enhance the community's ecological, environmental and aesthetic qualities;
- To reduce the negative effects of increases in air temperatures, glare, noise, erosion and sedimentation caused by expanses of impervious and non-vegetated surfaces within the urban environment;
- To preserve and improve the natural urban environment by recognizing that the use of landscaping elements can contribute to the processes of air purification; oxygen regeneration; groundwater recharge; storm water runoff retardation; and the abatement of noise, glare and heat;
- To safeguard and enhance property values and protect public and private investment; and
- To support water conservation.

### **Sec. 14.802 Application of Article**

(a) Applicability.

(1) Except as otherwise provided herein, this article applies to all uses on a lot when an application for a building permit for work on the lot is made.

(2) This article does not apply to:

- (1) Any property with a previously approved landscape and/or site plan prior to adoption of this article, unless such plan is required to be resubmitted for consideration; and

- (2) Restoration of a building that has been damaged by fire, flood, explosion, riot, act of the public enemy, other natural disaster, or accident of any kind, if said structure may be restored under the nonconforming use provisions of the Comprehensive Zoning Ordinance. For purposes of this Subsection, restoration means the act of putting back into a former or original state.
- (3) Planned Development Districts. Landscaping requirements consistent with the standards and purposes of this article shall be a part of all ordinances establishing or amending planned development districts, unless otherwise approved by the City Council.
- (4) Exceptions. The Planning and Zoning Commission may grant a special exception to the requirements upon evidence presented that:
  - (a) Strict compliance with the requirements of this article will unreasonably burden the use of the property;
  - (b) The requirements are not imposed by a site-specific landscape plan approved by the Planning and Zoning Commission or City Council; or
  - (c) The extent to which other existing or proposed amenities will compensate for the reduction of landscaping.
- (5) Permits.
  - (a) No permit shall be issued for building, paving, grading, construction or reconstruction until a detailed landscape plan complying with this section is approved by the building official. Prior to the issuance of a certificate of occupancy, all landscaping shall be in place in accordance with the approved landscape plan.
  - (b) If the Building Official determines that it would be impractical to plant trees, shrubs or grass or to lay turf, due to adverse weather conditions or the season of the year, a temporary certificate of occupancy may be issued. Issuance of a temporary certificate of occupancy will be subsequent to receipt of a letter of agreement from the property owner, tenant and/or agent agreeing to compliance with the terms of this section stating when the installation shall occur, and a letter of credit or bond for one hundred fifty percent (150%) of the estimated cost of the landscaping. All required landscaping shall be installed within six (6) months of the date of the issuance of the temporary certificate of occupancy.

#### **Sec. 14.803 Landscape Plan Submission**

(a) Landscape Plan Required. A landscape plan shall be submitted to the City for approval by the Director of Development Services or designee prior to the issuance of a building, paving, grading or construction permit. The Director or designee shall review the landscape plan to determine compliance with the criteria of these regulations. If the plans are not in compliance, they shall be disapproved and shall be accompanied by a written statement setting forth the changes necessary for compliance.

(b) Plan Content. Landscape plans shall be prepared by a registered Landscape Architect knowledgeable in plant material usage and landscape design (*e.g.*, landscape architect, landscape contractor, landscape designer) and shall contain the following minimum information in the form and number as prescribed by the City:

- (1) Date, scale, north arrow, and the names, addresses, and telephone numbers of both the property owner and the person preparing the plan.
- (2) Project name, street address, and lot and block description.
- (3) Location of existing boundary lines and dimensions of the lot, street address, approximate centerline of existing water courses and the location of the 100-year flood plain, if applicable; the approximate location of significant drainage features; and the location and size of existing and proposed streets and alleys, utility easements, driveways and sidewalks on or adjacent to the lot.
- (4) Location, height, and material of proposed screening and fencing (with berms to be delineated by one-foot contours).
- (5) Locations and dimensions of proposed landscape buffer strips.
- (6) Complete description of plant materials shown on the plan, including names, locations, quantities, container or caliper sizes at installation, heights, spread, and spacing. The location and type of all existing trees on the lot over six inches in caliper must be specifically indicated.
- (7) Complete description of landscaping and screening to be provided in or near off-street parking and loading areas, including information as to the amount (in square feet) of landscape area to be provided internal to parking areas, the total square footage included in the parking area, and the number and location of required off-street parking and loading spaces.
- (8) A computation or table showing the landscaping that is required and the landscaping being provided.
- (9) Location and description, by type and size, of existing trees proposed to be retained. Such trees shall be marked and drip-line of said trees shall be protected prior to and during all construction, including all dirt work.



- (10) Size, height, location and material of proposed seating, lighting, planters, sculptures, water features and landscape paving and other site amenities.
- (11) Identification of visibility triangles on the lot for all driveway intersections with public streets.
- (12) Trees relocated on-site must be identified with their existing and proposed locations.
- (13) Location of centerlines of overhead and underground utility lines adjacent to and within the building site, and the location of all utilities, utility easements, including the location of utility poles, generators, and equipment.

#### **Sec. 14.804 Mandatory Provisions**

##### **(a) Right-of-way Landscaping Requirements**

- (1) Streetscape Buffer. A Street Landscape Buffer strip with a minimum width of 6 feet, must be provided along the entire length of the property to be developed, between the back-of-curb and sidewalk, that is adjacent to any residential land use. This shall also apply to all commercial land uses where there is no adjacent on-street parking. This shall be exclusive of driveways and access-ways.
- (2) Street Tree Requirement. Large shade trees, as defined in Sec. 14.805 for rights-of-way, shall be provided in the required buffer in numbers equal to one tree for each fifty feet of street frontage.
  - (A) When the location of local utility prohibits planting large trees, two small trees may be planted for each large tree.
- (3) Other Landscaping. All street rights-of-way located adjacent to the development shall be improved with grass or ground cover material and shall be maintained. It shall be the responsibility of the developer to design the irrigation system within the lot to ensure that the grass placed in the right-of-way is watered and maintained and to ensure that minimal water will enter the street itself. The designer of the irrigation system shall base the design on the ultimate proposed width of the street when designing the system. The plans for design of the irrigation system shall be approved by the City prior to installation.

##### **(b) Required Site Landscaping**

##### **(1) Minimum Landscaping Requirements**

- (A) Area Required. For all nonresidential and multi-family (with more than 6 units) parcels, at least twenty percent (20%) of the site shall be permanently landscaped. All of the required landscaped area shall be

located in the Street Yards, side yards and parking lots.

(B) Trees Required. At least one large tree shall be provided as follows:

- (1) Street Yards Less than 10,000 square feet. In Street Yards of less than ten thousand (10,000) square feet, one (1) tree per one thousand (1,000) square feet, or fraction thereof, of Street Yard.
- (2) Street Yards More than 10,000 square feet. In Street Yards of more than ten thousand (10,000) square feet, ten (10) trees plus one (1) tree per two thousand (2,000) square feet, or fraction thereof, of Street Yard area over ten thousand (10,000) square feet.
- (3) Credits for Existing Trees. Any trees not listed on the Cities non-Protected Tree list that are preserved on a site may be credited toward meeting the tree requirement of any landscaping provision of this section according to the following table:

<b>Diameter</b>	<b>CREDIT</b>
<b>F</b>	<b>TOWA</b>
6" to 8"	1.0 tree
9" to 30"	1.5 trees
31" to 46"	2.0 trees
47" or more	3.0 trees

**Note 1:** Tree diameter shall be measured four and one-half feet (4 1/2') above natural grade.

**Note 2:** Due to their limited height and size, mesquite trees will receive only fifty percent (50%) of the above credit for tree preservation.

- (4) Ornamental Trees. Two (2) ornamental trees may be substituted for one (1) required large tree. Not more than fifty percent (50%) of the required large trees may be substituted by installing ornamental trees. Ornamental trees shall be a minimum of six feet (6') in height at the time of planting.
- (5) Shrubbery Required. At least one shrub shall be required for every fifty (50) square feet of the required landscape area. Placement of such shrubbery shall be taken into consideration as to the plant at full maturity, and be located so as not to conflict with vehicular or pedestrian traffic visibility.
- (6) Ground Cover Required. At least ten percent (10%) of the required landscape area shall be maintained in ground cover. The remaining landscape area shall be maintained in lawn grasses and mulch used

around bedding plants, shrubs and trees.

- (B) Location of Landscaping. No less than thirty percent (30%) of the total requirement shall be located in front of and along the side of buildings with street frontage in Multi-family and Commercial zoning districts, including the ORT district. One hundred percent (100%) of the total requirement shall be located in front of and along the side of buildings with street frontage in Industrial zoning districts, not including the ORT district.
- (C) Detention Basins. Detention basins shall be landscaped in a natural manner using grown cover, grasses, shrubs and trees in all dry land areas. There shall be a minimum of one (1) tree for each 750 square feet of dry land area.
  - (1) In the interest of public health, detention basins should be used sparingly and alternative methods of collecting and filtering storm water should be considered as not to promote standing water.

(c) Landscaping for Non-residential Land Uses.

- (1) Screening of Parking. Where on-site parking is located adjacent to a street, roadway or public open space, a minimum ten-foot (10') landscape buffer is required between the property lines and any parking, paving or internal driveways. Driveway openings are permitted in the landscape buffer area. The area of the landscaped buffer may be included in the total required landscape area for the lot.
  - (A) Location. The landscaped buffer requirement shall apply to all sides of the lot adjacent to a public street, open space or right-of-way.
  - (B) Screen. The screening shall be between a minimum height of three feet (3') and a maximum of four feet (4') above the grade of the parking lot and located adjacent to the parking lot. Screening shall be opaque and consist of shrubs and/or berms.
  - (C) Materials. Shrubs shall be capable of reaching a height of three feet (3') within eighteen (18) months of planting, and shall be planted no more than thirty-six inches (36') on center. Berms shall comply with provisions set forth in Section 14.805. Screening walls shall be masonry.
- (2) Internal Parking Lot Landscaping. It is the intent of this sub-section to encourage the high quality design and construction of parking areas in the City. It is also the intent of this section to aid in the abatement of noise, glare and heat associated with large expanses of hard paved surfaces and motor vehicles.
  - (A) Parking Lot Landscape Area. Parking lot landscape area requirements shall be on the percentage of parking located between the building façade

and the R.O.W.:

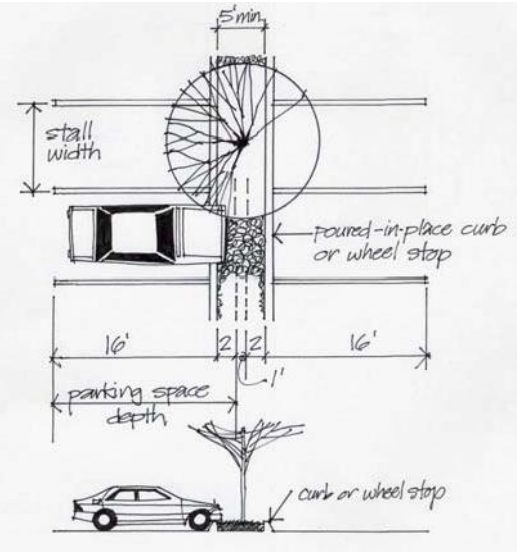
Less than 25% = 15 sq. ft. per parking stall

25% - 75% = 20 sq. ft. per parking stall

Greater than 75% = 30 sq. ft. per parking stall

Notwithstanding the standards above, the parking lot landscaping area requirement may be reduced by fifty percent (50%) for that portion of parking located behind the building's or development's primary façade.

- (B) Distribution of Islands, Peninsulas and Medians. The number, size and shape of islands, peninsulas and medians, in both street and non-Street Yards shall be at the discretion of the property owner or applicant. All required islands, peninsulas and medians shall be more or less evenly distributed throughout such parking areas. However, the distribution and location of landscaped islands, peninsulas and medians may be adjusted to accommodate existing trees or other natural features so long as the total area requirements for landscaped islands, peninsulas and medians for the respective parking areas above are satisfied.



**EXAMPLE OF A  
LANDSCAPE BUFFER  
BETWEEN PARKING  
BAYS**

- (1) Planter islands shall have a minimum width of ten feet (10') from edge of pavement to edge of pavement unless used as a landscape buffer between parking bays, which shall be a minimum of five feet (5') in width.
- (2) No required parking space may be located more than eighty feet (80') from the trunk of a large canopy tree. Notwithstanding the minimum planter dimension above, where required to meet this standard, the minimum

size tree planting area shall be five (5) feet square and only trees approved for use in street rights-of-way may be used.

1. The center of no tree may be planted closer than two and one-half feet (2½') to the pavement.

(C) Planting Requirements. All planter islands in parking areas shall contain a minimum of one (1) canopy tree with the remaining area in shrubs, ground cover, grasses or seasonal color. Planter islands which have light poles for lighting the parking areas may substitute two (2) understory/accent trees for the required canopy tree.

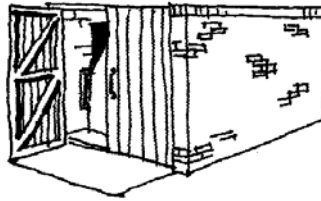
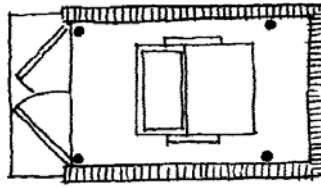
(3) Screening of Off-Street Loading Docks

(A) Off-street loading docks in Commercial and Industrial zoning classifications must be screened from all public streets and open space, and any residential district that abuts or is directly across a public street or alley from the lot.

(B) Screening may be achieved by any method listed above, but must be at least 8 feet (8') in height.

(4) Screening of Trash Dumpsters. All refuse storage areas for trash dumpsters shall be visually screened by a solid masonry fence not less than 6 feet (6') in height. Six-inch (6") concrete filled steel protective poles shall be placed at possible impact areas. The access area shall not face a public street unless otherwise approved during site plan approval.

Dumpster storage should be located to the rear of building with proper access. Trash dumpsters shall not be located in any required parking space and shall allow proper access by service trucks. Dumpster pad sites shall be designed to City standards specified in the Subdivision Standards of Design.



**Wall Enclosure**

(5) Screening from Residential Uses

- (A) Any Commercial or Industrial use or parking lot that has a side or rear contiguous to any Residential district, shall be screened with a masonry fence (excluding tilt wall or concrete block unless approved by the Planning and Zoning Commission) which is a minimum of six feet (6') in height, unless otherwise approved by the Planning and Zoning Commission. Berms in conjunction with a fence can be utilized to meet this requirement. Any ordinances concerning sight obstructions of intersections shall be applicable to the screen where it is intersected by a street, alley or driveway.
- (B) Prior to construction of any required screens, complete plans showing type of material, depth of beam, and structural support shall be reviewed by the Director to determine whether or not:
  - (1) The screen will withstand the pressures of time and nature;
  - (2) The screen adequately accomplishes the purpose for which it was intended.
  - (3) Plans shall be sealed by a Registered Engineer or they shall conform to the City's standard design for screening walls.
- (C) Such screen shall be constructed prior to the issuance of a Certificate of Occupancy for any building or portion thereof.

- (D) The areas adjacent to the required screening wall, or areas adjacent to a public street or right-of-way, shall be maintained by the property owner in a clean and orderly condition, free of debris and trash in accordance with the applicable codes of the City.

(6) Special Requirements for Facilities with Gasoline Sales.

- (A) Gasoline service stations, retail gasoline sales and other similar uses as determined by the Director shall require a minimum landscaped area of fifteen percent (15%) of the total lot area.
- (B) Gasoline service stations and other retail gasoline sales shall also provide a minimum six hundred (600) square foot landscaped area at each driveway intersection and at each corner of the lot adjacent to a street frontage. This additional landscaped area may be counted toward the minimum fifteen percent (15%) requirement.

(d) Dimensions of Landscaping. All required landscaping shall be no less than five feet (5') wide and a minimum of 25 square feet in area.

**Sec. 14.805 Landscape Materials & Standards**

(a) General

- (1) No Artificial or Synthetic Plant Material. No artificial or synthetic plant materials may be used to satisfy the requirements of this article.
- (2) Soil and planting area requirements
  - (A) In general. Planting areas dedicated to the growth of roots may include open space areas, covered soil areas, root paths, and drainage.
  - (B) Planting area requirements, except as provided in this section, must meet the following requirements.
    - (1) For each small tree installation, a minimum of 24 inches (24") of soil depth and 25 square feet of open soil area (total of 50 cubic feet).
    - (2) For each medium and large tree installation, a minimum of 36 inches (36") of soil depth and 200 square feet of open soil area (total of 600 cubic feet)

- (3) Trees may share open soil area.
  - (4) Large trees and medium trees must be planted a minimum of four feet (4') from pavement.
  - (5) The planting area must have native soil, prepared soil, or structural soil, and may include permeable pavement, sidewalks support systems, and soil cells.
- (C) Waivers. The Director of Development or designee may waive the minimum open soil and planting area requirements if a landscape architect certifies that:
- (1) The proposed alternative soil depth and dimensions are sufficient to support the healthy and vigorous growth of the plant material affected;
  - (2) The depth to impermeable subsurface prohibits minimum soil depth requirements; or
  - (3) That the proposed structural soil or suspended pavement system are sufficient to support healthy and vigorous growth of the plant material.
- (3) Approved Plant List.
- (A) Plant materials shall conform to the standards of the American Standard for Nursery Stock. Grass seed, sod and other material shall be clean and reasonably free of weeds and noxious pests and insects. Plant materials used to satisfy the requirements of this article must comply with the following minimum size requirements at the time of installation:
  - (B) A list of acceptable plant material will be maintained by the City and updated annually to ensure it is in coordination with industry standards.
  - (C) All required landscaped open areas shall be completely covered with living plant material. Landscaping materials such as wood chips and gravel may only be used under trees, shrubs and other plants.
  - (D) Trees. All trees shall comply with the following:
    - (1) A maximum of 35 percent (35%) of the required or replacement trees planted on a lot or tract may be of a single species.



- (2) Palm trees may not be used to satisfy the requirements of this article.
- (3) Invasive plant material is prohibited in required landscapes
- (4) A large tree shall have a caliper measuring at least three inches (3'') in caliper when measured six inches (6'') above the ground.
- (5) An ornamental tree shall measure at least one inch (1'') in caliper when measured six inches (6'') above the ground.
- (E) Shrubs. Shrubs except of the dwarf variety shall be a minimum of two feet (2') in height when measured immediately after planting. Hedges, where installed for screening purposes, shall be planted and maintained so as to form a continuous, unbroken, solid visual screen which will reach the required height within one (1) year after the time of planting.
- (F) Vines. Vines not intended as ground cover shall be a minimum of two feet (2') in height immediately after planting and may be used in conjunction with fences, screens or walls to meet landscape screening requirements.
- (G) Grass. Grass areas shall be sodded, plugged, sprigged, hydro-mulched or seeded. However, solid sod shall be used in swales, on earthen berms or in other areas subject to erosion.
- (H) Ground Cover. Ground cover used in lieu of grass in whole and in part shall be planted in such a manner as to present a finished appearance and reasonably completed coverage within one (1) year of planting.
- (I) Berms. Earthen berms shall have side slopes not to exceed 33 percent (33%) or 3:1 slope. All berms shall provide necessary drainage provisions which shall also be shown on any required site drainage plans.
- (J) Obstruction Prohibited. All placement of landscaping materials, with the exception of turf and grass covered areas, shall be designed so that any interference with pedestrians loading and unloading in designated parking areas is minimized; and so that the normal parking of vehicles and opening of doors in designated parking areas will not open into or damage the landscaping materials.
- (K) Height. For purposes of this sub-section, "height" is measured from the root crown or, if the plant is in a container, from the soil level in the container.

(b) Xeriscape Landscaping:

- (1) Xeriscape landscaping is an innovative, comprehensive approach to landscaping to promote water conservation. Xeriscape landscaping incorporates seven basic principles: planning and design, soil analysis, appropriate plant selection, practical turf areas, efficient irrigation, use of mulches and appropriate maintenance.
- (2) In order to reduce excessive water use, Xeriscape landscaping is encouraged. The total square footage of the required landscape area may be reduced by twenty percent (20%) if all landscaping materials have lower water demand, as identified by the Texas A&M Extension Service.

(c) Distance from overhead electric distribution lines.

- (1) Large and medium trees must be planted a minimum of 30 feet (30') from the closest point of an overhead electric distribution line.

(d) Adequate space. All trees must be planted with adequate space to allow unobstructed growth to maturity.

(e) Protection of Landscape Areas

- (1) Protection of Landscaping. Required landscape areas must be protected from vehicular traffic through the use of concrete curbs, or other permanent barriers. Vehicular wheels shall be prevented from extending into landscaped areas.
- (2) Nonresidential Development
  - (A) During any construction or land development, the developer shall clearly mark all trees to be preserved on site and may be required to erect and maintain protective barriers around all such trees or group of trees. No living trees greater than eight inches (8") in caliper may be cut, destroyed or damaged on the development site until approved as part of the landscape plan.
  - (B) The developer shall not allow the movement of equipment or the storage of equipment, materials, debris or fill to be placed within the drip line of any trees.
  - (C) During the construction stage of development, the developer shall not allow the cleaning of equipment or material under the canopy of any tree or group of trees to be preserved. The developer shall not allow the disposal of any waste material such as, but not limited to, paint, oil, solvents, asphalt, concrete or mortar under the canopy of any tree or group

of trees to be preserved.

- (D) No attachments, nails, screws or wires of any kind, other than those of a protective nature, shall be attached to any tree.

(3) Residential Development

- (A) Prior to any land development, the developer shall clearly mark all trees to be preserved on site and may be required to erect and maintain protective barriers around all such trees or groups of trees. No living trees greater than eight inches (8") in caliper may be cut, destroyed or damaged on the development site until approved as part of the preliminary plat.
- (B) No land may be proposed for development within twenty-four (24) months of having been cleared for agricultural purposes.
- (C) During the construction stage of development, the developer shall not allow the cleaning of equipment or material under the canopy of any tree or groups of trees to be preserved. The developer shall not allow the disposal of any waste materials such as but not limited to paint, oil, solvents, asphalt, concrete or mortar under the canopy of any trees or groups of trees to be preserved.
- (D) No attachments, nails, screws or wires of any kind, other than those of a protective nature, shall be attached to any tree.

(f) Irrigation Requirements.

(1) General.

- (A) All landscape irrigation shall be designed by a registered licensed irrigator.
- (B) The owner shall be responsible for the health and vitality of plant material through irrigation of all landscaped areas and plant materials, and shall
  - (1) Provide a moisture level in an amount and frequency adequate to sustain growth of the plant materials on a permanent basis.
  - (2) Be in place and operational at the time of the landscape inspection for Certificate of Occupancy.
  - (3) Be maintained and kept operational at all times to provide for efficient water distribution.

(2) Irrigation Methods

(A) Landscaped Areas. One of the following irrigation methods shall be used to ensure adequate watering of plant material in landscaped areas:

(1) Conventional System. An automatic or manual underground irrigation system which may be a conventional spray or bubbler type heads.

(2) Drip or Leaky-Pipe System. An automatic or manual underground irrigation system in conjunction with a water-saving system such as a drip or a leaky pipe system.

(3) Temporary and Above Ground Watering. Landscape areas utilizing xeriscape plants and installation techniques, including areas planted with native grasses and wildflowers, may use a temporary and above ground system, and shall be required to provide irrigation for the first two growing seasons only.

(B) Natural and Undisturbed Areas. No irrigation shall be required for undisturbed natural areas or undisturbed existing trees.

**Sec. 14.806 Public Right Of Way Visibility**

(a) Visibility Triangles. A landscape plan showing the plan of the street on both sides of each proposed drive/street to the proposed development with the grades, curb elevations, proposed street/drive locations, and all items (both natural and man-made) within the visibility triangles as prescribed below shall be provided with all site plans, if they are not on engineering plans that are submitted at the same time. This plan shall show no horizontal or vertical restrictions (either existing or future) within the areas defined below.

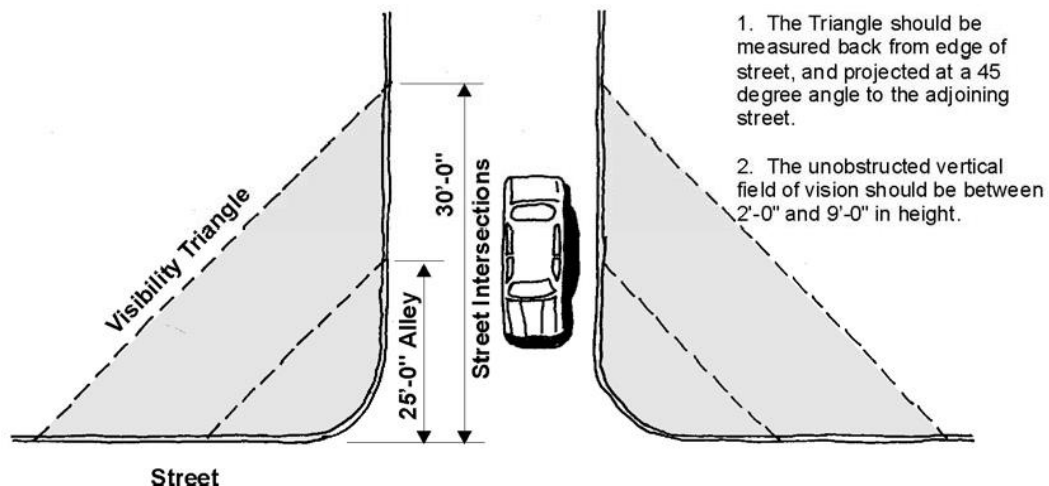
(b) Visibility Triangles–Defined. No fence, wall screen, billboard, sign face, tree or shrub foliage, berm, or any other item, either man-made or natural shall be erected, planted, or maintained in such a position or place so as to obstruct or interfere within the following minimum standards; however, on non-residentially zoned lots, a single pole for mounting a sign may be placed within this area provided the pole does not exceed 12 inches (12') in diameter, and provided every portion of the sign has a minimum height clearance of 9 feet (9'):

(1) Vision at all intersections which intersect at or near right angles shall be clear at elevations between twenty-four inches (24") and nine feet (9') above the top of the curb elevation, within a triangular area formed by extending the two curb lines from their point of intersection, for the following minimum distances for the applicable intersection, and connecting these points with an imaginary line, thereby making a triangle. If there are no curbs existing, the triangular area shall

be formed by extending the property lines from their point of intersection for a distance as prescribed below, and connecting these points with an imaginary line, thereby making a triangle as shown below.

- (2) Intersection of **Two Public Streets** – the minimum required distance from the curb shall be 30 feet (30') and the minimum distance from the property line on streets without a curb shall be 20 feet (20').
- (3) Intersection of a **Public Street and an Alley** – the minimum required distance measured from the property line shall be 15 feet (15'), or 25 feet (25') from street curb.
- (4) Intersection of **Private Drive and Public Street** – the minimum required distance from the curb shall be 15 feet (15') and the minimum distance from the property line on streets without a curb shall be 10 feet (10').
- (5) Intersection of **Private Drive and an Alley** – the minimum required distance measured from the property line shall be 10 feet (10').

(c) Sight Distance Requirements. The City hereby adopts the standards for both vertical and horizontal sight distance requirements set forth in the 1984 Edition of AASHTO Green Book, "A Policy on Geometric Design of Highways and Streets" for the construction of both public street intersections and private drive intersections, unless otherwise approved by the City Engineer. If, in the opinion of the City Engineer, a proposed street or drive intersection may not meet these standards, additional engineering information exhibiting how the standards have been addressed may be required for submission and approval by the City's Engineer.



## **Sec. 14.807      Completion of Landscaping**

### **(a)      In Accordance with Approved Plans**

Except as otherwise provided herein, all landscaping must be completed in accordance with the approved landscape plan before a Certificate of Occupancy may be issued for any building on the lot.

### **(b)      Escrow and Assurance**

If, due to circumstances beyond the property owner's control, the required landscaping cannot be installed prior to completion of the building and if the property owner provides the building official with documented assurance that the landscaping will be completed within six months and the funds required to complete the project are placed in escrow with the City, the building official may issue one six-month temporary Certificate of Occupancy and permit the property owner to complete his landscaping during the six month period. For purposes of this Subsection, "documented assurance" means a copy of a valid contract to install the landscaping in accordance with the landscape plan within the six month period. The City shall hold the funds in escrow until such time as the landscaping is completed in accordance with the approved plan.

### **(c)      Forfeiture of Escrow**

If a temporary Certificate of Occupancy is issued, and, at the end of the six month period, no permanent Certificate of Occupancy has been issued because the landscaping has not been installed in accordance with the landscape plan, the property owner shall be deemed in violation of this article, the funds placed in escrow shall be forfeited, and the City shall issue a citation for said violation, unless an extension is granted by the City Manager.

## **Sec. 14.808      General Maintenance**

### **(a)      Maintenance Requirement**

#### **(1)      Maintenance of Landscaping**

- (A)**      The owner, tenant and/or their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping. The owner, tenant and/or their agent is responsible for regular mowing, edging, pruning, fertilizing, watering, weeding and other such activities common to the maintenance of landscaping.
- (B)**      All required landscaping shall be maintained in a neat and orderly manner at all times. Landscaped areas shall be kept free of trash, litter, weeds and other such material or plants not a part of the landscaping. All plant material shall be maintained in a healthy and growing condition as is

appropriate for the season of the year.

- (2) Replacement of Dead Plant Materials. Plant materials which die shall be removed and replaced with plant material of similar variety and size within sixty (60) days. Trees with a trunk diameter in excess of six inches (6") measured twenty-four inches (24") above the ground may be replaced with ones of similar variety having a trunk caliper of no less than three inches (3") measured twenty-four inches (24") above the ground. A time extension may be granted by the building official for conditions relating to a season of the year per the requirements of this section.

(b) Enforcement. Failure to maintain any landscape area in compliance with this section is considered a violation of this article and shall be subject to penalties of this article. If at any time after the issuance of a certificate of occupancy the approved landscaping is found to be in nonconformance to the standards and criteria of this section, the building official or designee shall issue notice to the owner, tenant and/or their agent citing the violation and describing the action required to comply with this section.

(c) Utility Lines and Rights-of-Way. Any damage to utility lines resulting from the negligence of the property owner, his agents, or employees in the installation and maintenance of required landscaping in a utility easement is the responsibility of the property owner. If a public utility disturbs a landscaped area in a utility easement, it shall make every reasonable effort to preserve the landscaping materials, and return them to their prior locations after the utility work. If, nevertheless, some plant materials die, it is the obligation of the property owner to replace the plant materials."

### **SECTION 3**

From and after the effective date of this Ordinance, existing Article 14.900, "Tree Preservation," of Chapter 14, the Lancaster Development Code, is repealed in its entirety and replaced with a new Article 14.900, "Tree Conservation," to read as follows:

#### **"ARTICLE 14.900 TREE CONSERVATION**

##### **Sec. 14.901 General Provisions**

(a) Purpose. The purpose of this article is to promote site planning which furthers the preservation of trees and natural areas; to protect trees during construction; to facilitate site design and construction; contribute to the long-term viability of existing trees; and to prohibit clear cutting of trees. It is the further purpose of this article to achieve the following broader objectives:

- Prohibit the clearing of trees and natural areas;

- Protect and increase the value of residential and commercial properties within the City as well as forest value;
- Maintain and enhance a positive image, which will encourage further development in the City;
- Protect healthy quality trees and promote, enhance the ecological, environmental and aesthetic qualities of the City in future development;
- To encourage the increase of arboreal elements in design plans so as to improve both aesthetic and healthful conditions within the City;
- To further the preservation of trees and natural areas by protecting them during the planning, site design, construction and maintenance phases of any residential or commercial development within the City of Lancaster, Texas and
- To retain the optimum number of trees on any development site.

(b) Application: This article applies to all property in the City except for:

- (1) Lots smaller than two (2) acres in size that contain single-family or duplex uses in residential districts.
- (2) Lots in an overlay district or a planned development district with specified tree preservation regulations that vary from those in this article, as determined by the Director of Development Services or designee.

(c) In this section, a tree removal property one acre or less, in a residential district is considered to be vacant when an application is made for a demolition permit for a single family or duplex structure. The Director of Development Services or designee shall not waive mitigation of Protected Trees for an area greater than seventy percent (70%) of the tree removal property. Trees must be mitigated on a pro-rata basis if the development impact area exceeds seventy percent (70%) of the tree removal property.

## **Sec. 14.902 Definitions**

For purposes of this article, certain words or terms applicable hereto are hereinafter defined. Words and terms used in this article, but not defined in this article, shall have the meanings ascribed to them in the Lancaster Development Code or other ordinances of the City. Words and terms defined in two ordinances shall be read in harmony unless there exists an irreconcilable conflict in which case the definition contained in this article shall control. For purposes of this article, the Director of Development Services or designee shall have interpretive authority to use commonly accepted definitions and/or to utilize generally accepted



professional standards when any such conflict cannot otherwise be resolved.

***Agricultural Use.*** The use of land to produce plant or animal products, such as the growing of crops, raising and pasturing of livestock, timber production, Christmas tree, or farming.

***Administrative Official.*** Provisions of this article shall be administered by the Director of Development Services, who shall be appointed by the City Manager.

***ANSI.*** American National Standards Institute; standards used by the horticulture and landscape professionals to measure and evaluate trees.

***Bark Protection.*** Where a Protected Tree remains in the immediate area of intended construction, the tree shall be protected by enclosing the entire circumference of the tree with approved padding material and 2" x 4" lumber encircled with wire or any other method approved by the Director of Development Services or designee. The intent is to protect the bark of the tree against incidental contact or damage by large construction equipment.

***Boring.*** Boring of utilities shall be required in those circumstances where it is not possible to trench around the critical root zone of the Protected Tree. When required, the length of the bore shall be the width of the critical root zone at a minimum depth approved on site by Director of Development Services or designee.

***Buildable Area.*** That portion of a building site, exclusive of the required yard areas, on which a structure or building improvements may be erected and including the actual structure, driveway, parking lot, pool and other construction as shown on a site plan.

***Buffer Zone.*** Buffer zone is a method of screening or separating adjacent land use areas, which are improved with predominate non-residential use and whose side or rear lines are adjacent to a residential district or use and not separated by a public street or roadway. These buffers, when required, should be densely maintained with trees and shrubs and be a minimum of twenty-five (25') feet in depth.

***Builder/Contractor (New Construction Only).*** A builder or contractor who has purchased land or lots for construction with intent to sell is subject to all requirements specified herein.

***Building Envelope (BE).*** The area surrounding and adjacent to the building pad that may be cleared to allow for all necessary construction equipment and construction. Residential BE shall not exceed ten (10') feet from the Building Pad. Commercial BE shall be determined by the Director of Development Services for the necessary tree protection. All existing natural vegetation beyond the building envelope shall be protected by protective fencing.

***Building Pad.*** The actual foundation area of a building.

**Caliper.** The diameter of a tree measured is as follows: Height to measure depends on size: zero to four inches (0-4”), measured at six inches (6”) from natural ground level. Trees four inches (4”) to transplantable size are measured at twelve inches (12”) from natural ground level. All others at four and one-half feet (4.5’) from the ground level in Diameter at Breast Height (see ANSI standard).

**Class 1 Tree** means all specimen trees; except Eastern Red Cedar and Osage Orange, and all trees located in a primary natural area, floodplain, or geologically similar area measured to fifty feet above the escarpment zone.

**Class 2 Tree** means a tree that is not otherwise classified.

**Class 3 Tree** means Arizona ash, black willow, cottonwood, Eastern Red Cedar 24 inches (24”) in diameter or more, crabapple, honey locust,, mimosa, mulberry, sweet gum, ornamentals, Osage Orange and Hackberry/Sugarberry 24 inches (24”) in diameter or more, pinus spp., Siberian elm, and Silver maple larger than eight inches (8”) in diameter.

**Clear-Cutting.** The removal of all of the trees or a significant majority of the trees within an area of land.

**Conservation Design.** A development design or pattern intended or having the effect of creating, retaining or preserving environmentally sensitive areas, natural habitats, wooded areas or areas of natural beauty in greater amount than would be otherwise be provided using Conventional Design or Traditional Neighborhood Design. Techniques used to achieve this result principally include the grouping together and/or concentration of buildings into clusters, reduction in lot size, reduction in paved areas and/or streets, and the use of shared common areas.

**Conventional Design.** A development design or pattern characterized by homes and non-residential buildings located on large individual lots, physical separation of buildings, segregation of land uses, and a predominance of individual yards within privately owned lots rather than the use of commonly-owned open areas. This pattern frequently features long block lengths, wide streets, cul-de-sacs, alleys and an emphasis on transportation service via the privately owned automobile.

**Critically Alter, Critical Alteration.** Uprooting or severing the main trunk of a tree, or any act which causes or may reasonably be expected to cause a tree to die. This includes, but is not limited to: damage inflicted upon the root system of a tree; a change in the natural grade above the root system of a tree, storage of materials, or the compaction of soil above the root system of a tree; an application of herbicidal chemical or the misapplication of beneficial chemicals; excessive pruning; placement of non-permeable pavement over the root system or a tree; or trenching within the primary root zone. Additionally, a tree may be considered critically altered if more than twenty-five percent (25%) of the primary root zone is altered or disturbed at natural grade, or more than twenty-five percent (25%) of the canopy is removed.

***Critical Root Zone (CRZ).*** The area of undisturbed natural soil around a tree defined by a circle with a radius equal to the distance from the trunk to the outermost portion of the drip line. If the CRZ is compromised by site conditions, such as but not limited to, roads, sidewalks, existing buildings, utility easements, etc., the CRZ will be determined by the Director of Development Services or designee.

***Cut/Fill.*** Areas where the natural ground level has been excavated (cut) or raised (fill).

***Drip Line.*** A circular line, which follows the outermost portion of the canopy of a tree and extending to the ground.

***Diameter at Breast Height (DBH).*** The DBH is measured four and one-half feet (4.5') from natural ground level.

***Early succession stage.*** The biotic community that develops immediately following the removal or mortality of most or all of forest canopy, resulting in a predominance of woody species regeneration primarily comprised by "pioneer" plant species.

***FEMA 100-Year Flood Plain.*** The area designated as being within the one hundred year flood plain on the Federal Emergency Management Agency Flood Insurance Rate Map (FIRM) as of the effective date of this article. The boundary may be verified and established through field surveys based on elevation. Any changes made by FEMA to the 100-year flood plain boundary after the effective date of this article due to filling of the flood plain, channelization, or other drainage improvements shall not reduce the area in which tree preservation, replacement or protection requirements apply.

***Grade Change.*** Any changes in ground level or soil compaction within the area just beyond the spread of the branches that will damage the roots.

***Ground Level Cuts.*** Where Protected Tree removal is allowed through exemption or by tree removal permit, and the root system is intertwined with Protected Trees which are intended to be saved, the tree shall be removed by flush cutting with the natural level of the surrounding ground. If stump removal is desired stump grinding shall be allowed upon approval of the Director of Development Services.

***Grubbing.*** Excavating or removing a significant part of the root system.

***Residential Homestead.*** Owners of property zoned as residential, who reside at the property as their primary residence. This term does not include properties zoned "MF" Multi-Family Residential district.

***Limits of Construction.*** Delineation on the site plan defining the areas within which all construction activity may occur.

***Municipal/Public Domain Property.*** Property in which title is held in the name of a governmental entity. Examples of this would include City Hall, public parks, Corps of Engineers' property, State of Texas R.O.W., library, fire stations, water tower sites, public schools or similar properties.

***Old field.*** Land no longer under cultivation because the fertility of the soil has been exhausted.

***Open Space.*** A public or semi- public space, including common areas or parks, that:

- is open and unobstructed from its lowest level to the sky. (Vegetation and complimentary amenity structures such as open pavilions shade structures, picnic tables, playground equipment, bicycle racks drinking fountains, trash receptacles, goal posts, lighting etc. shall not be considered obstructions.)
- Is accessible to, designed for, and intended for the common use or enjoyment of the general public or the residents/occupants of a building, neighborhood or subdivision.
- Is used for recreation, resource protection, amenity or buffer yard/greenbelt purposes.
- Is not an existing or future right-of-way.
- Is not part of the roof of any building.

***Protective Fencing.*** Protective fencing shall be orange vinyl construction fencing or other material approved by Director of Development Services or designee with a four-foot (4') approximate height adequately supported.

***Pruning, Allowed.*** Approved pruning of Protected Tree(s) by Director of Development Services in cases where tree(s) must be strategically pruned to allow construction or demolition of a structure. When allowed, all pruning shall be in accordance with approved arboricultural technique and/or guidelines established by the Director of Development Services or designee.

***Pruning Permit.*** Permit required for all utility, franchise and City projects. No fee is required.

***R.O.W.*** means right-of-way.

***Thinning, Selective.*** The removal of selected trees from within a forested area. The purpose of Selective Thinning is to improve the health and natural growth form of remaining trees or remove invasive and sometimes non-native species.

***Top Soil.*** Top layer of soil native to the site.

***Traditional Neighborhood Design.*** A development design or pattern that is characterized by a mixture of housing types and densities, a mixture of land uses including retail, office, and civic uses, reduced paving and street sizes, and that affords ease of pedestrian access. This design typically features a gridiron street pattern, short block lengths, narrow streets, reduced

building setbacks from the street and close proximity of residential and non-residential buildings and uses.

***Tree.*** Any self-supporting woody perennial plant, which will attain a trunk diameter of two inches (2") or more when measured at a point four and one-half feet (4.5') above ground level and normally an overall height of at least fifteen feet (15') at maturity, singular or multi-trunk. The diameter of a multi-trunk tree shall be determined by adding the total diameter of ½ diameter of each additional trunk to the diameter of the largest trunk.

***Tree Board.*** The Tree and Landscape Advisory Board members shall be appointed by the City Council. The Board will meet as needed, to review and monitor the Tree Protection and Landscape Ordinances, and to advise the Director of Development Services, Park Board, City Council, Planning and Zoning Commission and citizens.

***Tree Diversity.*** A condition wherein no single species of tree or plant material comprises more than 30% of the cumulative total of plantings on a site or of replacement trees required due to mitigation and remediation.

***Tree Health.*** The condition of the tree, including structural integrity, pest and/or pathogen related problems.

***Tree, Heritage.*** Any tree planted and related to the heritage of the community, individual or homestead, or dedicated or planted as a public memorial, as designated by City Council

***Tree, Historic.*** Any tree that has been identified as having historical value or is associated with a notable local or regional historic event, person, structure or landscape, as designated by City Council.

***Tree, Park.*** Trees located in public parks and all areas owned by the City to which the public has free access to as a park.

***Tree, Preserved.*** A Protected Tree shall be considered preserved only if a minimum of seventy-five percent (75%) of the critical root zone is maintained at undisturbed natural grade and not more than twenty-five percent (25%) of the canopy is removed due to building encroachment. The canopy shall retain its natural form and integrity.

***Tree, Protected.*** A tree of any species that has a minimum diameter of six inches (6") that is not classified as unprotected in this article. The caliper of a multi-trunk tree shall be determined by adding the total diameter of the largest trunk to one-half (1/2) diameter of each additional trunk (refer to ANSI).

***Tree, Specimen.*** Means a healthy tree whose age, size, unique type, or natural character are of special importance to the City, and meets the following species and size requirements:

- (a) Post oaks with a minimum diameter of 12 inches (12"); and

- (b) Trees of all species having a minimum diameter of 24 inches (24”).

***Tree, Street.*** Trees, shrubs, and all other woody vegetation on land lying between property lines planted at recommended intervals with consideration of visibility triangle on either side of all streets, avenues, right-of-ways or entrances to the City. Tree species and planting techniques shall be selected to create a unified image for the street, provide an effective canopy, avoid sidewalk damage and minimize water consumption.

***Tree, Understory.*** A tree which the City has determined has significant positive characteristics worthy of preservation and that does not typically attain height greater than thirty feet (30’).

***Tree Survey.*** The Tree Survey is the heart of this article. Its purpose is not to penalize, but to aid in protecting our valuable natural resources during development and construction. The Tree Survey will also help determine the quantity of trees, if any, that may be removed or cannot be safely and adequately protected during the street utility, engineering/drainage, and construction phases of development.

***Tree Topping.*** The severe cutting back of limbs to stubs larger than three inches in diameter within the tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this article at the determination of the Director of Development Services or designee.

***Tree, Canopy or Shade.*** Canopy or Shade Tree means a species of tree which normally bears crown foliage no lower than six feet (6’) above ground level upon maturity.

***Unprotected Tree*** means the following:

- (a) Callery pear (all cultivars)
- (b) Chinaberry
- (c) Mesquite (with a diameter of less than 24 inches)
- (d) Eastern Red Cedar (with a diameter of less than 24 inches)
- (e) Chinese Tallow
- (f) Hackberry & Sugarberry Species (with a diameter of less than 24 inches)
- (g) Ilex Species (except for yaupon holly and Possumhaw holly)
- (h) Palm (all plants in *Palmae*)
- (i) Tree-of-heaven or Ailanthus
- (j) Other trees listed on the Texas A&M invasive plant list

#### **Sec. 14.903 Permit Required**

A tree removal permit shall be obtained from the Director of Development Services or designee before any person, directly or indirectly, shall clear cut/remove, destroy or do selective thinning on any Protected Tree(s) situated on property regulated by this article, except as specified

herein (definitions of clear cutting, selective thinning, and ground level cuts).

(a) New Development/Construction. In the event it becomes necessary to remove a tree for development or construction, a Tree Removal Permit shall be required. New construction shall include Residential, Non Residential, Special Developments, Planned Developments and individual contractor builders shall be required to meet the criteria herein specified and shall require a Tree Removal Permit for the removal of any Protected Tree. During platting, a permit shall be issued after preliminary plat approval by Planning and Zoning Commission.

- (1) Submission of a Tree Removal Permit Application to the City shall authorize the Director of Development Services or designee to conduct field inspections of the site as necessary to meet the provisions of this Article and any published Guidelines. After thorough review of the Tree Removal Permit Application and accompanying documents, the Director of Development Services or designee will approve as submitted, approve with conditions, or disapprove the applications.
- (2) All developers and/or builders who have not submitted preliminary plats as of the effective date of this article shall be subject to the requirements for tree protection and replacement specified in this article.
- (3) All areas within public R.O.W., utility easements or drainage easements, as shown on an approved Preliminary Plat and areas designated as cut/fill on the master drainage construction plan approved by the Director of Development Services, shall be subject to the tree protection requirements specified herein except as otherwise provided herein.

(b) Municipal/Public Domain Property. All municipal or public domain property shall be subject to this Article regarding protection and replacement specified. A Tree Removal Permit shall be required with fee exemption for the removal of a Protected Tree. Any Protected Tree to be removed must be shown on construction plans approved by the Director of Development Services or designee.

(c) City/Franchise for Existing R.O.W. and Public Easements. All construction and maintenance activity within public R.O.W. or easements shall be subject to the requirements for tree protection and replacement specified in this article.

- (1) City Projects. The City shall be subject to the requirements for tree protection and replacement on all projects. A Tree Removal Permit shall be required with fee exemption for the removal of a Protected Tree.
- (2) Pruning. The owners of all trees adjacent to public R.O.W. shall be required to maintain a minimum clearance of fourteen feet (14') above the traveled pavement or curb of a public street. Said owners shall also remove all dead,

diseased or dangerous trees, or broken or decayed limbs, which shall constitute a menace to public safety. (The City shall also have the right to prune trees overhanging within the Public R.O.W. which interfere with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign or as necessary to preserve the public safety.)

- (3) Stump Removals. All stumps of street and park tree shall be removed below the surface of the ground so the top of the stump shall not project above the surface of the ground.
- (4) Franchise and Other Utility Companies. All utility company projects shall be subject to the requirements for tree protection and replacement specified in this article. Companies shall meet beforehand on site with Director of Development Services or designee, and obtain pruning permit before work is begun. Pruning activities by a utility company must comply with Definitions on Pruning, allowed, Pruning required, and Tree Topping. Prior to beginning any pruning not requested by the owner of the tree; the contractor shall submit a Tree Pruning Request for approval. A Tree Removal Permit must be obtained prior to the removal of a Protected Tree. This permit must be accompanied by current pictures, site plan or construction plan meeting the site plan requirements specified in this article.
  - (A) Utility companies may prune trees as necessary to re-establish disrupted electric service without obtaining a permit.
  - (B) Compliance with this article shall be amended to and included with all future revision of all franchise agreements.
  - (C) All trenching shall be designed to avoid trenching across the critical root zone of any Protected Tree. Although this is not intended to prohibit the placement of underground service such as electric, phone, gas, etc., the placement of these utilities is encouraged to be located outside of the critical root zone of Protected Tree(s).
  - (D) Pictures of work site shall be submitted with all permit applications and is a requirement for procurement prior to work beginning.

(d) No fee shall be charged to make application for a tree removal permit for the removal of Protected Trees located on real property having an agricultural zoning district classification. However, if within any 12-month period, (i) tree removal permits for the removal of twenty (20) or more Protected Trees are issued for the same agricultural property or tract, or any of its portions, or (ii) fifty percent (50%) or more of the trees on the property (where the number of trees on the property prior to removal is reasonably determined to exceed forty (40) or more trees) have been removed, the agricultural zoning district classification of such property cannot



be changed, nor can an application for approval of a subdivision plat, planned development or zoning amendment relative to such property be made, for a period of 24 months following the most recent 12-month period during which twenty (20) or more Protected Trees were removed, or fifty percent (50%) or more of the trees on the property have been removed, from such agricultural zoned property.

(e) Permit Expiration. Permits for tree removal shall become void one hundred eighty (180) days after the issue date on the permit.

#### **Sec. 14.904 Submittal Requirements**

Prior to removing a Protected Tree(s) and receiving a tree removal permit, the applicant shall submit a Tree Removal Permit Application and pay the application fee to the City. The applicant shall also submit a written reason for the request to remove the Protected Tree(s), as well as the following information as applicable:

(a) Tree Survey

(1) Purpose. The Tree Survey is vital to this article. Its purpose is to aid in protecting the City's valuable natural resources during all phases of development and construction. Additionally, the Tree Survey will help identify; the trees to be mitigated on the site that may be damaged in the construction zone; determine the trees that must be accommodated in the development of essential streets, utilities and building construction, and in the adjustment of these streets, utilities and building envelopes, to protect as much of the native vegetation as possible.

(2) Scope. A Tree Survey shall be conducted on all residential and non-residential tracts and be current to within the twenty-four (24) months immediately prior to submission of and included with the following:

(A) Preliminary Plat

(B) Replat

(C) Final Plat

(D) Site Plan Review

(E) Application for Building Permit

(F) Street, Utility, and drainage plans

(G) Concept Plan for a Planned Development

(3) Detail

- (A) The Tree Survey shall be performed by a degreed urban forester, certified arborist, registered surveyor or qualified personnel as approved by the Director of Development Services or designee.
- (B) The Tree Survey shall be accurate and include: Location, size (DBH), species, and trees with health problems (structural integrity, pest and/or pathogens) with a six-inch (6") or greater caliper. The Tree Survey information shall be compiled in a tabular format with each Tree identified by a number corresponding to a numbered tree on the Site Plan.
- (C) The entire parcel being proposed for development should be included in the Tree Survey.
- (D) Once the Tree Survey has been accomplished and submitted to the City, all Trees on the Tree Survey shall be classified as Protected Trees, with the exception of those classified as Unprotected Tree species under this article.

(b) Commercial Development. Additional requirements for the tree survey on commercial tracts of land shall require a complete tree survey, which shall include the following:

- (1) All areas within public R.O.W.;
- (2) Public utility or drainage easements shown on an approved Final Plat; and
- (3) Fire lanes, parking and drive areas, exclusive of the building pad, shall be subject to the tree protection and replacement requirements specified herein.

(c) Aerial Photos and Sampling. With the submittal of a concept plan or preliminary plat, whichever occurs first for property containing large, heavily wooded areas, the Director of Development Services or designee may, in lieu of a tree survey, authorize the submittal of an aerial photograph accompanied by a transparent plan of the development at the same scale as the photograph, showing all non-disturbance areas and proposed exemption areas where no trees will be critically altered.

For heavily wooded areas where development activity and disturbance is intended or likely, the Director of Development Services or designee is authorized, but not required, to accept sampling of the property in lieu of a tree survey for all or any part of a property, provided that a tree survey of all other areas is submitted to the Director of Development Services prior to any grading or construction. Said Sample or sampling techniques should be representational of the site or wooded area and should comprise at least fifteen percent (15%) of

the total site or wooded area and the sampling technique shall be approved by the Director of Development Services or designee prior to conducting the sample.

The Director of Development Services or designee may approve the submission of photographs or samples in phases for a multiphase project.

(d) Tree canopy cover assessment for old-field and undeveloped lots, two (2) acres or larger, in early succession stages will constitute a fifty percent (50%) reduction of Class 3 trees when:

- (1) at least 60 percent (60%) of the trees in the stand are Class 3 and unprotected species; and
- (2) the average tree diameter is less than 12 inches (12") in diameter.
- (3) The tree canopy cover assessment excludes areas within 50 feet (50') of a 100-year floodplain, 50 feet (50') of a wetland, 50 feet (50') of an escarpment zone, and 150 feet (150') of a stream bank.
- (4) The trees in the stand are designated in an age class of fifty (50) years or less by the Director of Development Services or designee based on site and historic data.
- (5) The stand is assessed and surveyed using tree sampling methods which provide general species quantity and size approved by the Director of Development Services or designee.

(e) Affidavit of No Protected Trees. If a property contains no Protected Tree species, or if construction, grading, trenching or related activities are not to be performed in an area containing Protected Trees, the applicant may submit an Affidavit of No Protected Trees in lieu of a tree survey. This affidavit shall act in lieu of a tree survey upon a determination by the Director of Development Services that no Protected Trees exist on the site. The Director of Development Services shall review the Affidavit. The Affidavit shall be denied or approved when determined if the property contains Protected Tree(s) or non-protected tree(s) by the Director of Development Services.

(f) A Tree Preservation Plan. A tree preservation plan shall be submitted showing major site construction features, existing trees to remain, existing trees that may be removed, and replacement trees showing species, location, number and size. The Tree Preservation Plan information may be included on the tree survey if all information can be clearly delineated.

#### **Sec. 14.905 Exemptions**

Any exemption shall be approved by the Director of Development Services or designee prior to

removal of any tree(s). A Tree Removal Permit and tree protection and replacement requirements shall not be required under any of the following circumstances.

(a) Public Safety. The tree endangers the public health, welfare of safety and immediate removal is required due to structural integrity concerns.

(b) Utility Service Interruption. The tree has disrupted a public utility service due to a tornado, storm, flood or other act of nature. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.

(c) Landscape Nursery. All licensed plant or tree nurseries shall be exempt from the tree protection and replacement requirements and from the tree-removal permit requirements only in relation to those trees planted and growing on the premises of said licensee, which are so planted and growing for the sale or intended sale to the general public in the ordinary course of said licensee's business.

(d) Diseased Trees. Tree removal is permissible when a tree is infected with transmittable pathogens, damaged beyond the point of recovery, or in danger of falling as determined by the Director of Development Services or designee prior to the removal of the tree.

(e) Residential Property. Owners of property zoned as residential, who reside at the property and use the residence as their primary residence. Citizens of Lancaster who have a homestead within the City of Lancaster and own residential rental properties shall have an exemption on a maximum of two (2) properties for removal of Protected Trees.

(f) Building Pad. The building foundation and an area extending ten feet (10') from the building foundation as shown on an approved Site Plan shall be exempt from tree replacement and mitigation.

#### **Sec. 14.906 Review and Approval Process**

(a) Authority for Review. The Director of Development Services or designee shall evaluate any plans required by this article for determination that the applicant has made a good faith effort in saving as many Protected Trees as possible. An analysis prepared by the Director of Development Services or designee shall be forwarded to the Planning and Zoning Commission and the City Council for their consideration regarding denial or approval of the development. The Director of Development Services or designee shall be responsible for the review and approval of all requests for tree removal permits submitted in accordance with the requirements specified herein.

- (1) Deferrals. The Director of Development Services or designee may defer the approval of a tree removal permit to the Planning and Zoning Commission for any reason. All decisions made by the Planning and Zoning Commission shall be final.

- (2) Appeals. Decisions made by the Director of Development Services may be appealed to the Planning and Zoning Commission. Any such appeal shall first be considered by the Tree Board. The Tree Board shall be authorized, but not required, to forward a non-binding recommendation to the Planning and Zoning Commission. All decisions made by the Planning and Zoning Commission shall be final.

(b) Fee Schedules. The Director of Development Services or designee shall establish administrative procedures necessary to facilitate the implementation and enforcement of this article. All tree removal permits shall be accompanied by a payment made to the City of Lancaster in the amount established by resolution of the City Council to cover the cost of review and passed by Resolution.

#### **Sec. 14.907 Transplanted Trees**

(a) Procedure: Established and healthy Protected Trees on a tree removal property may be transplanted within the City. The transplanting process must conform to operational and safety standards stated in ANSI A300, as amended, and with ISA Best Management Practices for Tree Planting, as amended.

- (1) A Protected Tree that meets the requirements of this section is not considered removed, or seriously injured, if the transplanted tree is planted and maintained in a healthy growing condition.
- (2) Director of Development Services approval is required before beginning the transplantation for credit as a landscape tree, or for tree replacement.
- (3) The following information is required to obtain Director of Development Services approval in this section:
  - (a) An initial assessment report must be provided to the Director of Development Services describing the transplanting practice from beginning to end, including post planting care practices.
  - (b) A tree survey or landscape plan which identifies the original and final location of the Protected Tree.
  - (c) Company names, contact information, and credentials of contractor performing work.
  - (d) Other information required by the Director of Development Services.
- (4) Credit for transplanted trees.

- (a) Healthy large and medium Protected Trees less than six inches (6") in diameter qualify for one inch of replacement credit for each inch of the transplanted tree.
- (b) Healthy large and medium Protected Trees between 6 inches (6") and less than 12 inches (12") in diameter qualify for two-inch replacement credit for each inch of the transplanted tree.
- (c) Healthy large and medium Protected Trees between 12 and less than 24 inches in diameter qualify for three-inch replacement credit for each inch of the transplanted tree.
- (d) Healthy large and medium Protected Trees 24 inches (24") or more in diameter qualify for five inch (5") replacement credit for each inch of the transplanted tree.

### Credit for Transplanted Trees

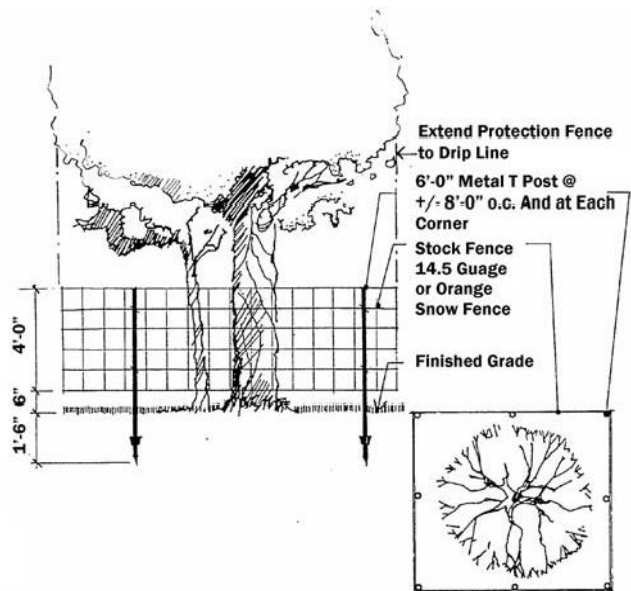
Tree inches (diameter)	Number of Credits
6" or less	1
6" – less than 12"	2
12" – less than 24"	3
24" or more	5

### Sec. 14.908 Guidelines for Tree Protection

A major purpose of this Section is to protect all the Protected Trees retained on the site for approved development and construction to occur.

(a) During Construction. Minimum requirements for the protection of all Protected Trees on the development and construction site related, but not limited to, streets, parking lots, building sites, driveways and sidewalks shall be strictly adhered to. This shall include:

- (1) Establishing a Building Envelope enclosed with approved fencing; establishing designated areas for parking all vehicles, trailers, construction equipment, related items as



well as storage of all supplies and materials;

- (2) Clearly identifying designated restricted areas on construction and site plans and the project location;
- (3) Proper protection of Drip line of a Protected Tree with appropriate fencing as defined by the Director of Development or designee;
- (4) Approved bilingual (English and Spanish) signage visibly located at site;
- (5) Retention and protection of Under Story Vegetation and leaf litter during all phases of development;
- (6) Boring of any underground utilities, which passes within a Protected Tree or Critical Root Zone; and
- (7) Enactment of preventive measures to prevent grade changes of one-half inch (1/2") or more, or fill, within a Tree Protection or Critical Root Zone.

Additional protective measures may be required by the Director of Development Services or designee as a condition of permit approval. Such conditions may be established by the publication of Tree Preservation Guidelines and/or by attaching conditions of permit approval.

(b) Trenching. All trenching shall be designed to avoid trenching across the critical root zone of any Protected Tree. Although this is not intended to prohibit the placement of underground service such as electric, phone, gas, etc., the placement of these utilities is encouraged to be located outside of the critical root zone of Protected Tree(s). Irrigation system trenching shall be placed outside the critical root zone with only the minimum required single head supply allowed within that area placed radially to the tree trunk and shall be hand trenched with roots cleanly cut or use of air spade to reduce damage.

(c) Prohibited Activities. Prior to and during development and construction, the following activities shall be prohibited. The Director of Development Services or designee shall be authorized to provide more detailed explanations by publication of Tree Preservation Guidelines or by attachment of conditions to any permit issued pursuant to this article. All such directions shall be strictly adhered to.

- (1) Clear cutting of trees on a property for any purpose at any time except for the exceptions provided for in Section 14.905.
- (2) Construction vehicles and equipment parking and storage around Protected Trees.
- (3) Storage, placing or disposing of construction and waste materials around

Protected Trees.

- (4) Restrictions and prohibitions on unapproved grade changes that may damage or destroy Protected Trees.
- (5) Water accumulations due to construction-related activities.
- (6) Unapproved attachments to Protected Trees.
- (7) Removal of more than twenty-five percent (25%) of a Protected Tree's foliage in a given year. No pruning or topping may significantly disfigure the tree, or be done in a manner, which would reasonably lead to the death of the tree.
- (8) Any person acting to circumvent the purpose of this article.
- (9) Impervious materials used in or near Protected Trees.
- (10) Unapproved fencing and bark protection methods on any construction sites in and near the Protected Tree areas.
- (11) Construction methods such as boring, grade change, trenching, and root pruning that damage or destroy Protected Trees.
- (12) Placement of fill within the drip line of any Protected Tree on any undeveloped property.

**Sec. 14.909 Tree Replacement**

(a) In the event that it is necessary to remove a Protected Tree(s) as authorized by this article, the applicant shall be required to replace the tree(s) being removed with approved trees.

(b) Except as provided in this section the minimum total caliper inches of replacement trees must equal or exceed the total diameter of the protect trees removed or seriously injured as listed below:

- (1) Tree classification for mitigation:

Historic & Heritage Trees: 3:1

Specimen Trees: 1.5:1

Class 1: 1:1

Class 2: 0.7:1



Class 3: 0.4:1

(2) Species:

- (A) A replacement tree must be an approved tree determined by the Director of Development Services or designee.
- (B) For a lot or tract two (2) acres in size or more, no one species of tree may constitute more than 30 percent (30%) of the same species.

(c) Responsibility and Site Requirements. The Director of Development Services or designee shall determine the agent responsible for replacement, the time frame for replacement and the location of the new trees. The replacement trees shall be located on the subject site whenever possible. However, if this is not feasible, the Director of Development Services or designee has the authority to allow the planting to take place on another property, including public property. If the Director of Development Services or designee approves the planting of replacement trees more than thirty (30) days after the removal of Protected Trees, the applicant shall provide the City with an affidavit that all replacement trees will be planted within six (6) months and maintained by the applicant for a minimum of two (2) years in good condition. Developers shall plant all the replacement trees identified on the Mitigation Plan. The Director of Development Services or designee shall document the date of replacement trees on the reforestation plan and record for review of the 2-year commitment.

Inasmuch as it is reasonable and feasible, replanting on the development or construction site will be encouraged in order to restore the original natural landscape character of the site.

- (1) The Director of Development Services or designee has the authority to reject any trees not meeting these standards.
- (2) One (1) 6-month extension may be approved by the Director of Parks and Recreation or designee due only to seasonal limitations that would make planting of trees impractical, and shall require an escrow deposit in an amount equal to one hundred ten percent (110%) of the mitigated value.
- (3) The applicant shall be required to maintain the replacement trees in good condition for a minimum of two (2) years. If a replacement tree dies or is damaged within the initial two-year period, the applicant shall replace it with a tree approved by the Director of Development Services or designee.

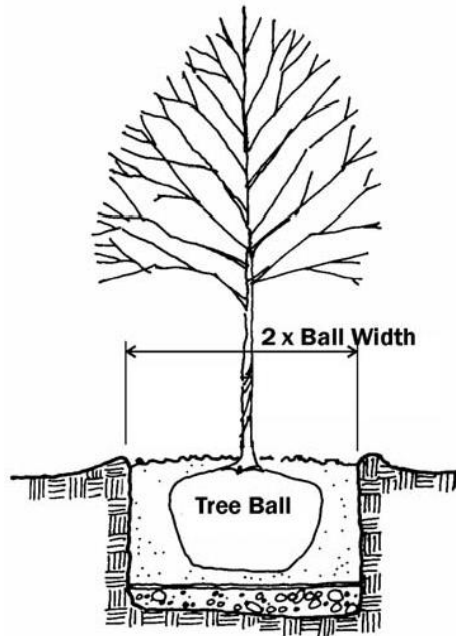
(d) Payment in Lieu of Replacement.

- (1) To the extent that tree replacement is not feasible, the Director of Development Services or designee shall determine in accordance with the provisions provided

herein, the amount of the payment by the developer or other responsible party. Upon such determination, said payment shall be made to the City of Lancaster Reforestation and Natural Area Fund based on the following guidelines:

- (2) For Protected Trees, payment will be made in the amount of one hundred sixty dollars (\$160.00) per one inch (1") DBH. The Director of Development Services or designee shall be authorized to reduce this amount in accordance with the following:
  - (A) In cases when at least fifty percent (50%) of the required mitigation is provided by on-site or off-site tree planting, a reduction to not less than one hundred dollars (\$100) per one inch (1") DBH may be allowed.
  - (B) A two (2") inch credit against mitigation and/or reparations may be authorized for each inch of large tree that is preserved and designated as Specimen, Historic, or Heritage tree. Designation of Specimen, Historic, Champion, or Heritage trees not located on the same property may also be used for this credit upon review and approval of same. The property owner or responsible party for said tree designated as a Specimen, Historic, or Heritage tree shall be responsible for the care and maintenance of said tree.
  - (C) A one (1") inch for one (1") inch credit against mitigation and/or payment shall be authorized for the preservation of any tree provided that:
    - (i) Said tree to be preserved is a minimum of six (6) caliper inches and is listed as a Class 1 tree.
    - (ii) Said tree to be preserved is located in an exempted area or is otherwise free from mitigation and/or reparations requirements.
    - (iii) Said tree is protected from future removal, destruction or critical alteration by the establishment of protective covenants, easements, or agreements.
- (3) Subsequent removal damage, or critical alteration of any tree used for credit as identified in this section shall require mitigation replacement and/or reparations in accordance with this article.
- (4) If any Protected and/or Replacement Tree(s) dies within two (2) years of initial planting or issuance of Certificate of Occupancy and is brought to the attention of the Director of Development Services or designee, the original permit applicant shall be subject to the same replacement fee as for a Protected Tree.

- (5) Money paid in lieu of tree replacement made in compliance with this section shall be considered contributions to the LRNA Fund.
- (6) The LRNA Fund shall be used for purchasing and planting trees on public property, acquiring property that shall remain in a naturalistic state in perpetuity through outright purchase or Development Rights, and assisting in the cost of administering this article.
- (7) The Director of Development Services or designee shall be authorized to temporarily defer the payment of any mitigation or reparation fees when such action is deemed to be warranted due to unique circumstances, such as when the amount of mitigation is subject to change, when a development agreement is pending, or other similar transitory circumstances. Any such deferred fee shall be rectified and paid in full prior to the filing of a plat in the County records.



**Sec. 14.910 Alternative methods of compliance with tree replacement requirements**

(a) Mitigation. If the Director of Development Services determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the tree removal property the responsibly party may comply with one or more of the following requirements:

- (1) Donate the replacement tree to the City's Parks and Recreation Department, with the approval of the Director of the Parks and Recreation Department.

- (2) The responsible party may pay for the installation of irrigation in a City park with the approval of the Director of the Parks and Recreation Department or designee if the number of inches being planted by the Parks and Recreation Department meets a minimum of fifty percent (50%) of the required replacement inches.
  - (3) Plant the replacement trees on another City-authorized property, the responsible property must obtain the written approval of the following:
    - (A) The property owner where the replacement trees will be planted and the responsible party, to transfer responsibility for the replacement tree under this article to the receiving party.
    - (B) A site plan indicating the address of the property where the replacement tree will be planted, and a site plan indicating the location of the replacement tree.
    - (C) The agreement may be structured to allow a non-profit association dedicated to tree advocacy or conservation of land to plant, manage, and monitor replacement tree.
  - (4) Grant a conservation easement to the City that combine Protected Trees with a combined caliper equal to or exceeding the caliper for which mitigation is being requested. The City Manager is authorized to accept and approve on behalf of the City a conservation easement to conserve trees and other natural features.
    - (A) Detailed baseline document prepared by a qualified professional describing the properties physical and biological condition, the general age of any tree stands, locations of easements and construction, and the conservation values protected by the easement.
    - (B) Parcels identified through the Parks and Recreation Master plan as future potential open space may be donated to the City as approved by the City Manager.
- (b) Street Trees & Open Space. New developments incorporating Traditional Neighborhood Design with a minimum of fifteen percent (15%) open space, Conventional Design with a minimum of twenty percent (20%) open space, or Conservation Design with a minimum of twenty-five percent (25%) open space and the provision of street trees shall be exempt from the mitigation applicable for Protected Tree loss within rights-of-way (ROW) areas. For purposes of this section the following apply:
- (1) Street trees shall be planted an average of thirty feet (30') on center, in minimum

five-foot (5') wide planter strips located between the curb and minimum five-foot (5') wide sidewalk. In secondary areas without planter strips, trees shall be kept as close to the sidewalk to provide shade canopy, be aligned to visually frame the street, avoid sidewalk damage, and minimize water consumption. Street trees shall be of a limited selection of tree species, as listed in the City's Approved Plant List, to give them a unified and distinct image.

- (2) Tree species and placement shall be designed to avoid the use of a single species, to visually frame streets and to create an identifiable and distinct image.
- (3) Adequate sight distances must be maintained, in order to ensure safety.
- (4) Infrastructure shall be engineered and constructed to assure placement of street trees will not be injurious to utilities, vision clearance, or other public improvements.
- (5) Maintenance of "street trees" including adequate irrigation shall be provided by homeowners individually or shall be incorporated into the homeowner association (H.O.A.) and business development agreements.

#### **Sec. 14.911 Tree Planting Restrictions**

- (a) Overhead Lines. Any required replacement trees shall not be planted within an area such that the mature canopy of the selected tree will interfere with overhead utility lines.
- (b) Underground Utilities. Any required replacement trees or street trees shall not be planted within an area such that the mature root zone of the tree will interfere with underground public utility lines (including water lines, sewer lines, transmission lines or other utilities). Selection of tree species whose root systems are the least invasive to utilities may be considered.
- (c) Fire Hydrants. No trees shall be planted within ten feet (10') of a fire hydrant.
- (d) Street Corners. No street trees shall be planted closer than thirty-five feet (35') of any street corner, measured from the point of nearest intersecting curbs or curb-lines.

#### **Sec. 14.912 Street Trees**

- (a) Acceptable Trees. The City shall maintain a list of acceptable trees for planting along streets, buffer yards, medians, within parks, or within other public areas. Trees other than those listed as acceptable may only be planted within said public areas upon approval of the Director of Development Services.
- (b) Street Tree Spacing. The spacing of street trees will be in accordance with

recommendations of the Director of Development Services. Closer spacing or group plantings may be approved by the Director of Development Services in unique situations.

(c) Homeowner Associations (HOAs) or Property Owners. HOAs or property owners shall maintain a clearance above the street level of fourteen feet (14'), seven to eight feet (7' to 8') above sidewalks, and branching of trees out of the Visibility Triangle. Landscape maintenance of street trees to accommodate buses and service vehicles shall be incorporated into homeowner association and business agreements. HOAs will be responsible for replacement of trees along public rights-of-way within their neighborhood.

(d) Public Tree Care. The City shall have the right to prune and maintain street trees, and park trees within the lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to insure public health, safety and welfare. The City may, by determination of the Director of Development Services or designee, remove, cause or order to be removed, any tree or part thereof which is in an unsafe condition; or which by reason of its nature maybe injurious to sewers, electric power lines, gas lines, water lines, vision clearance or other public improvements.

#### **Sec. 14.913 Enforcement**

(a) Developers Agreement. No developer's agreement shall be approved which does not state that all construction activities shall meet the requirements of this article.

(b) Building Permit. No building permit shall be issued unless the applicant signs an application or permit request which states that all construction activities shall meet the requirements of this article.

(c) Acceptance of Improvements. No acceptance of public improvements shall be authorized until all fines for violation of this article have been paid to the City or otherwise disposed of through the Municipal Court. No acceptance of public improvements shall be authorized until all replacement trees have been planted, or appropriate payments have been made to the Reforestation Fund; however, the acceptance of public improvements may be authorized before all trees have been replaced provided a fiscal security deposit is posted in the amount equal to one and one-half times (1½ X) the prevailing rate for installed trees with a two (2) year guarantee, plus fifteen percent (15%) to cover administrative costs. Said deposit shall be forfeited if subject trees are not planted within thirty (30) days of notification by the Director of Development Services or designee.

(d) Certificate of Occupancy. No Certificate of Occupancy shall be issued until all fines for violations of this article have been paid to the City or otherwise disposed of through the Municipal Court. No Certificate of Occupancy shall be issued until all replacement trees have been planted or appropriate payments have been made to the Reforestation Fund; however, that a Certificate of Occupancy may be granted before all trees have been replaced provided a fiscal security deposited is posted in the amount equal to one and one half times (1½ X) the prevailing

rate for installed trees with a two (2) year guarantee, plus fifteen percent (15%) to cover administrative costs. Said deposit shall be forfeited if subject tree(s) are not planted within thirty (30) days of notification by the City of Lancaster.

#### **Sec. 14.914 Violations**

(a) In addition to any criminal penalty for violation of this article, any person, firm, corporation, agent, City, state, or federal organization or employee thereof who violates the provisions of this article where such violation results in the removal or damage to applicable trees shall be guilty of a misdemeanor and upon conviction shall be assessed a civil penalty of one hundred ninety-five dollars (\$195.00) per diameter inch of the tree(s) removed or damaged.

(b) The unlawful injury, destruction or removal of each Protected Tree shall be considered a separate incident, and each incident subjects the violator to the penalty set forth herein per tree. Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this article.

(c) Removal of Public Trees. It shall be deemed a violation of this article for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the City without first adhering to the requirements of this article and procuring approval from the Director of Development Services.

(d) Violations and Assessments. Violations of this article and non-payment of fines levied will be attached to property involved through standard legal methods.

(e) Any person, firm, corporation, agent, City, state, or federal organization or employee thereof who violates a procedural requirement or who fails to comply with conditions established with a permit issued by the Director of Development Services or designee pursuant to this article shall be guilty of a misdemeanor and upon conviction shall be fined five hundred dollars (\$500.00) per violation. Each procedural violation or failure to comply each day shall be considered a separate incident, and each incident subjects the violator to the penalty set forth herein.”

#### **SECTION 4**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

## **SECTION 5**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

## **SECTION 6**

Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of Five Hundred Dollars (\$500.00), and each and every day such violation shall continue shall constitute a separate offense.

## **SECTION 7**

This Ordinance shall become effective from and after its passage and publication.

**DULY PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF  
THE CITY OF LANCASTER, TEXAS, ON THIS \_\_\_\_ DAY OF JUNE, 2017.**

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**Marcus E. Knight, Mayor**

**ATTEST:**

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**Sorangel Arenas, City Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

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**David C. Ritter, City Attorney**



## ARTICLE 14.800 LANDSCAPE Regulations and STANDARDS

### Sec. 14.801 Purpose

(a) Purpose. Landscaping is accepted as adding value to property and is in the interest of the general welfare of the city. The City Council of the City of Lancaster has declared that a goal for the city is to provide an optimal quality of life for all citizens of Lancaster by improving the appearance of the city through increased public and private landscaping and reducing litter.

(b) Intent. These landscaping regulations provide standards and criteria for new landscaping with live plant material, and are intended to promote the value of property, enhance the general welfare, improve the physical appearance of the city, and enhance the community's ecological, environmental and aesthetic qualities. It is further the intent of this Article to

- To establish requirements for the installation and maintenance of landscaping elements and other means of site improvement on existing and newly developed property in order to enhance the community's ecological, environmental and aesthetic qualities;
- To reduce the negative effects of increases in air temperatures, glare, noise, erosion and sedimentation caused by expanses of impervious and non-vegetated surfaces within the urban environment;
- To preserve and improve the natural urban environment by recognizing that the use of landscaping elements can contribute to the processes of air purification; oxygen regeneration; groundwater recharge; storm water runoff retardation; and the abatement of noise, glare and heat; and
- To safeguard and enhance property values and protect public and private investment.
- To support water conservation.

### Sec. 14.802 Application of Article

(a) Applicability.

(1) This Article does apply to:

Except as otherwise provided in *Subsection 2.1.B*, this article applies to all uses on a lot when an application for a building permit for work on the lot is made, unless the application is for:

(2) This article does not apply to:

- a. Any property with a previously approved landscape and/or site plan prior to adoption of this ordinance, unless such plan is required to be resubmitted for consideration; and
- b. Restoration of a building that has been damaged by fire, flood, explosion, riot, act of the public enemy, other natural disaster, or accident of any kind, if said structure may be restored under the nonconforming use provisions of the Comprehensive

Zoning Ordinance. For purposes of this Subsection, restoration means the act of putting back into a former or original state; and

- (3) Planned Development Districts. Landscaping requirements consistent with the standards and purposes of this article shall be a part of all ordinances establishing or amending planned development districts, unless otherwise approved by the City Council.
- (4) Exceptions. The Planning and Zoning Commission may grant a special exception to the requirements upon evidence presented that :
  - a. Strict compliance with the requirements of this article will unreasonably burden the use of the property;
  - b. The requirements are not imposed by a site-specific landscape plan approved by the planning and zoning commission or city council;
  - c. The extent to which other existing or proposed amenities will compensate for the reduction of landscaping.
- (5) Permits.
  - a. No permit shall be issued for building, paving, grading, construction or reconstruction until a detailed landscape plan complying with this section is approved by the building official. Prior to the issuance of a certificate of occupancy, all landscaping shall be in place in accordance with the approved landscape plan.
  - b. If the Building Official determines that it would be impractical to plant trees, shrubs or grass or to lay turf, due to adverse weather conditions or the season of the year, a temporary certificate of occupancy may be issued. Issuance of a temporary certificate of occupancy will be subsequent to receipt of a letter of agreement from the property owner, tenant and/or agent agreeing to compliance with the terms of this section stating when the installation shall occur, and a letter of credit or bond for 150% of the estimated cost of the landscaping. All required landscaping shall be installed within six (6) months of the date of the issuance of the temporary certificate of occupancy.

**NOTE:**

- Residential lot requirements are covered in Article 14.901
- Proposed exception give room for case by case review of unique properties

**Sec. 14.803 Landscape Plan Submission**

(a) Landscape Plan Required. A landscape plan shall be submitted to the City for approval by the Director of Development services or designee prior to the issuance of a building, paving, grading or construction permit. The Director or designee shall review the landscape plan to determine compliance with the criteria of these regulations. If the plans are not in compliance, they shall be disapproved and shall be accompanied by a written statement setting forth the changes necessary for compliance.

(b) Plan Content. Landscape plans shall be prepared by a registered Landscape Architect knowledgeable in plant material usage and landscape design (e.g. landscape architect, landscape contractor, landscape designer) and shall contain the following minimum information in the form and number as prescribed by the City:

- (1) Date, scale, north arrow, and the names, addresses, and telephone numbers of both the property owner and the person preparing the plan.

- (2) Project name, street address, and lot and block description.
- (3) Location of existing boundary lines and dimensions of the lot, street address, approximate centerline of existing water courses and the location of the 100-year flood plain, if applicable; the approximate location of significant drainage features; and the location and size of existing and proposed streets and alleys, utility easements, driveways and sidewalks on or adjacent to the lot
- (4) Location, height, and material of proposed screening and fencing (with berms to be delineated by one-foot contours).
- (5) Locations and dimensions of proposed landscape buffer strips.
- (6) Complete description of plant materials shown on the plan, including names, locations, quantities, container or caliper sizes at installation, heights, spread, and spacing. The location and type of all existing trees on the lot over six inches in caliper must be specifically indicated.
- (7) Complete description of landscaping and screening to be provided in or near off-street parking and loading areas, including information as to the amount (in square feet) of landscape area to be provided internal to parking areas, the total square footage included in the parking area, and the number and location of required off-street parking and loading spaces.
- (8) A computation or table showing the landscaping that is required and the landscaping being provided.
- (9) Location and description, by type and size, of existing trees proposed to be retained. Such trees shall be marked and drip-line of said trees shall be protected prior to and during all construction, including all dirt work.
- (10) Size, height, location and material of proposed seating, lighting, planters, sculptures, water features and landscape paving and other site amenities.
- (11) Identification of visibility triangles on the lot for all driveway intersections with public streets.
- (12) Trees relocated on-site must be identified with their existing and proposed locations.
- (13) Location of centerlines of overhead and underground utility lines adjacent to and within the building site, and the location of all utilities, utility easements, including the location of utility poles, generators, and equipment.

#### **Sec. 14.804 Mandatory Provisions**

##### **(a) Right-of-way Landscaping Requirements**

- (1) **Streetscape Buffer.** A Street Landscape Buffer strip with a minimum width of 6 feet, must be provided along the entire length of the property to be developed, between the back-of-curb and sidewalk, that is adjacent to any residential land use. This shall also apply to all commercial land uses where there is no adjacent on-street parking. This shall be exclusive of driveways and access-ways.
- (2) **Street Tree Requirement.** Large shade trees, as defined in Sec. 14.805 for rights-of-way, shall be provided in the required buffer in numbers equal to one tree for each fifty feet of street frontage.
  - A. **When the location of local utility prohibits planting large trees, two small trees may be planted for each large tree.**

- (3) **Other Landscaping.** All street rights-of-way located adjacent to the development shall be improved with grass or ground cover material and shall be maintained. It shall be the responsibility of the developer to design the irrigation system within the lot to ensure that the grass placed in the right-of-way is watered and maintained and to ensure that minimal water will enter the street itself. The designer of the irrigation system shall base the design on the ultimate proposed width of the street when designing the system. The plans for design of the irrigation system shall be approved by the City prior to installation.

(b) Required Site Landscaping

(1) **Minimum Landscaping Requirements**

- A. **Area Required.** For all nonresidential and multi-family (with more than 6 units) parcels, at least twenty percent (20%) of the site shall be permanently landscaped. All of the required landscaped area shall be located in the Street Yards, side yards and parking lots.
- B. **Trees Required.** At least one large tree shall be provided as follows:
1. **Street Yards Less than 10,000 square feet.** In Street Yards of less than ten thousand (10,000) square feet, one (1) tree per one thousand (1,000) square feet, or fraction thereof, of Street Yard.
  2. **Street Yards More than 10,000 square feet.** In Street Yards of more than ten thousand (10,000) square feet, ten (10) trees plus one (1) tree per two thousand (2,000) square feet, or fraction thereof, of Street Yard area over ten thousand (10,000) square feet.
  3. **Credits for Existing Trees.** Any trees not listed on the Cities non-protected tree list that are preserved on a site may be credited toward meeting the tree requirement of any landscaping provision of this section according to the following table:

Diameter OF EXISTING TREE	CREDIT TOWARD TREE REQUIREMENT
6" to 8"	1.0 tree
9" to 30"	1.5 trees
31" to 46"	2.0 trees
47" or more	3.0 trees

**Note 1:** Tree diameter shall be measured four and one-half feet (4 1/2') above natural grade.

**Note 2:** Due to their limited height and size, mesquite trees will receive only fifty percent (50%) of the above credit for tree preservation.

4. **Ornamental Trees.** Two (2) ornamental trees, may be substituted for one (1) required large tree. Not more than fifty percent (50%) of the required large trees may be substituted by installing ornamental trees. Ornamental trees shall be a minimum of six (6) feet in height at the time of planting.
5. **Shrubbery Required.** At least one shrub shall be required for every fifty (50) square feet of the required landscape area. Placement of such shrubbery shall be taken into consideration as to the plant at full maturity, and be located so as not to conflict with vehicular or pedestrian traffic visibility.

6. **Ground Cover Required.** At least ten percent (10%) of the required landscape area shall be maintained in ground cover. The remaining landscape area shall be maintained in lawn grasses and mulch used around bedding plants, shrubs and trees.

C. **Location of Landscaping.** No less than 30% of the total requirement shall be located in front of and along the side of buildings with street frontage in Multi-family and Commercial zoning districts, including the ORT district. 100% of the total requirement shall be located in front of and along the side of buildings with street frontage in Industrial zoning districts, not including the ORT district.

D. **Detention Basins.** Detention basins shall be landscaped in a natural manner using grown cover, grasses, shrubs and trees in all dry land areas. There shall be a minimum of 1 tree for each 750 square feet of dry land area.

1. In the interest of public health, detention basins should be used sparingly and alternative methods of collecting and filtering storm water should be considered as not to promote standing water.

(c) Landscaping for Non-residential Land Uses.

(1) **Screening of Parking.** Where on-site parking is located adjacent to a street, roadway or public open space, a minimum ten-foot (10') landscape buffer is required between the property lines and any parking, paving or internal driveways. Driveway openings are permitted in the landscape buffer area. The area of the landscaped buffer may be included in the total required landscape area for the lot.

A. **Location.** The landscaped buffer requirement shall apply to all sides of the lot adjacent to a public street, open space or right-of-way.

B. **Screen.** The screening shall be between a minimum height of three (3) feet and a maximum of four (4) feet above the grade of the parking lot and located adjacent to the parking lot. Screening shall be opaque and consist of shrubs and/or berms.

C. **Materials.** Shrubs shall be capable of reaching a height of three (3) feet within eighteen (18) months of planting, and shall be planted no more than thirty-six (36) inches on center. Berms shall comply with provisions set forth in *Section 14.805*. Screening walls shall be masonry.

(2) **Internal Parking Lot Landscaping.** It is the intent of this sub-section to encourage the high quality design and construction of parking areas in the City. It is also the intent of this section to aid in the abatement of noise, glare and heat associated with large expanses of hard paved surfaces and motor vehicles.

A. **Parking Lot Landscape Area.** Parking lot landscape area requirements shall be on the percentage of parking located between the building façade and the R.O.W.:

Less than 25% = 15 sq. ft. per parking stall

25% - 75% = 20 sq. ft. per parking stall

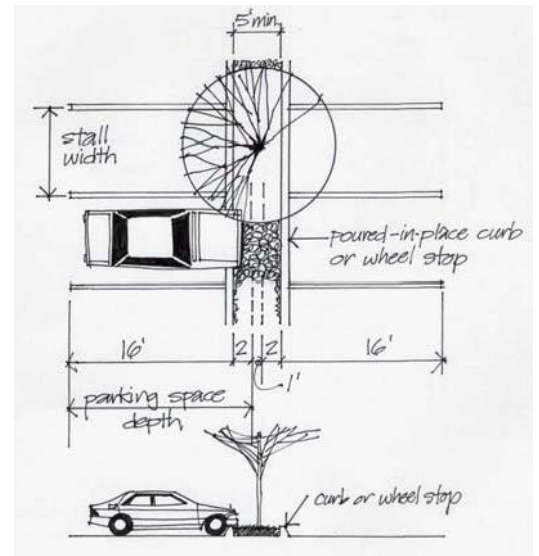
Greater than 75% = 30 sq. ft. per parking stall

Notwithstanding the standards above, the parking lot landscaping area requirement may be reduced by 50% for that portion of parking located behind the building's, or development's, primary façade.

B. **Distribution of Islands, Peninsulas and Medians.** The number, size and shape of islands, peninsulas and medians, in both street and non-Street Yards shall be at the

discretion of the property owner or applicant. All required islands, peninsulas and

medians shall be more or less evenly distributed throughout such parking areas. However, the distribution and location of landscaped islands, peninsulas and medians may be adjusted to accommodate existing trees or other natural features so long as the total area requirements for landscaped islands, peninsulas and medians for the respective parking areas above are satisfied.



EXAMPLE OF A LANDSCAPE BUFFER BETWEEN PARKING BAYS

1. Planter islands shall have a minimum width of 10' from edge of pavement to edge of pavement unless used as a landscape buffer between parking bays, which shall be a minimum of five (5) feet in width.
2. No required parking space may be located more than 80 feet from the trunk of a large canopy tree. Notwithstanding the minimum planter dimension above, where required to meet this standard, the minimum size tree planting area shall be five (5) feet square and only trees approved for use in street rights-of-way may be used.
3. The center of no tree may be planted closer than 2 ½ feet to the pavement.

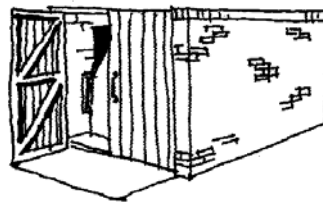
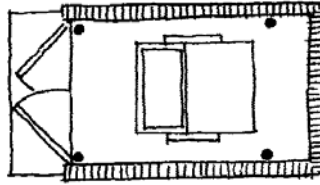
C. Planting Requirements. All planter islands in parking areas shall contain a minimum of one (1) canopy tree with the remaining area in shrubs, ground cover, grasses or seasonal color. Planter islands which have light poles for lighting the parking areas may substitute two (2) understory/accent trees for the required canopy tree.

(4) Screening of Off-Street Loading Docks

- A. Off-street loading docks in Commercial and Industrial zoning classifications must be screened from all public streets and open space, and any residential district that abuts or is directly across a public street or alley from the lot.
- B. Screening may be achieved by any method listed above, but must be at least 8 feet in height.

(5) Screening of Trash Dumpsters. All refuse storage areas for trash dumpsters shall be visually screened by a solid masonry fence not less than 6 feet in height. Six-inch concrete filled steel protective poles shall be placed at possible impact areas. The access area shall not face a public street unless otherwise approved during site plan approval.

Dumpster storage should be located to the rear of building with proper access. Trash dumpsters shall not be located in any required parking space and shall allow proper access by service trucks. Dumpster pad sites shall be designed to City standards specified in the Subdivision Standards of Design.



**Wall Enclosure**

**(6) Screening from Residential Uses**

- A. Any Commercial or Industrial use or parking lot that has a side or rear contiguous to any Residential district, shall be screened with a masonry fence (excluding tilt wall or concrete block unless approved by the Planning and Zoning Commission) which is a minimum of six (6) feet in height, unless otherwise approved by the Planning and Zoning Commission. Berms in conjunction with a fence can be utilized to meet this requirement. Any ordinances concerning sight obstructions of intersections shall be applicable to the screen where it is intersected by a street, alley or driveway.
- B. Prior to construction of any required screens, complete plans showing type of material, depth of beam, and structural support shall be reviewed by the Director to determine whether or not:
  - 1. The screen will withstand the pressures of time and nature;
  - 2. The screen adequately accomplishes the purpose for which it was intended.
  - 3. Plans shall be sealed by a Registered Engineer or they shall conform to the City's standard design for screening walls.
- C. Such screen shall be constructed prior to the issuance of a Certificate of Occupancy for any building or portion thereof.
- D. The areas adjacent to the required screening wall, or areas adjacent to a public street or right-of-way, shall be maintained by the property owner in a clean and orderly condition, free of debris and trash in accordance with the applicable codes of the City.



- (7) Special Requirements for Facilities with Gasoline Sales.
- A. Gasoline service stations, retail gasoline sales and other similar uses as determined by the Director shall require a minimum landscaped area of fifteen percent (15%) of the total lot area.
  - B. Gasoline service stations and other retail gasoline sales shall also provide a minimum six hundred (600) square foot landscaped area at each driveway intersection and at each corner of the lot adjacent to a street frontage. This additional landscaped area may be counted toward the minimum fifteen percent (15%) requirement.
- (d) Dimensions of Landscaping. All required landscaping shall be no less than 5 feet wide and a minimum of 25 square feet in area.

#### **Sec. 14.805 Landscape Materials & Standards**

(a) General

- (1) No Artificial or synthetic Plant Material. No artificial or synthetic plant materials may be used to satisfy the requirements of this article.
- (2) Soil and planting area requirements
  - A. In general. Planting areas dedicated to the growth of roots may include open space areas, covered soil areas, root paths, and drainage.
  - B. Planting area requirements, except as provided in this section, must meet the following requirements.
    - 1. For each small tree installation, a minimum of 24 inches of soil depth and 25 square feet of open soil area (total of 50 cubic feet).
    - 2. For each medium and large tree installation, a minimum of 36 inches of soil depth and 200 square feet of open soil area (total of 600 cubic feet)
    - 3. Trees may share open soil area.
    - 4. Large trees and medium trees must be planted a minimum of four feet from pavement
    - 5. The planting area must have native soil, prepared soil, or structural soil, and may include permeable pavement, sidewalks support systems, and soil cells.
  - C. Waivers. The Director of Development or designee may waive the minimum open soil and planting area requirements if a landscape architect certifies that:
    - 1. The proposed alternative soil depth and dimensions are sufficient to support the healthy and vigorous growth of the plant material affected;
    - 2. The depth to impermeable subsurface prohibits minimum soil depth requirements; or
    - 3. That the proposed structural soil or suspended pavement system are sufficient to support healthy and vigorous growth of the plant material.

(3) Approved Plant List.

- A. Plant materials shall conform to the standards of the American Standard for Nursery Stock. Grass seed, sod and other material shall be clean and reasonably free of weeds and noxious pests and insects. Plant materials used to satisfy the requirements of this article must comply with the following minimum size requirements at the time of installation:
- B. A list of acceptable plant material will be maintained by the City and updated annually to ensure it is in coordination with industry standards.
- C. All required landscaped open areas shall be completely covered with living plant material. Landscaping materials such as wood chips and gravel may only be used under trees, shrubs and other plants.
- D. **Trees.** All trees shall comply with the following:
  - 1. A maximum of 35 percent of the required or replacement trees planted on a lot or tract may be of a single species.
  - 2. Palm trees may not be used to satisfy the requirements of this article.
  - 3. Invasive plant material is prohibited in required landscapes
  - 4.
  - 5. A large tree shall have a caliper measuring at least three inches (3") in when measured six inches (6") above the ground.
  - 6. An ornamental tree shall measure at least one inch (1") in caliper when measured six inches (6") above the ground.
- E. **Shrubs.** Shrubs except of the dwarf variety shall be a minimum of two feet (2') in height when measured immediately after planting. Hedges, where installed for screening purposes, shall be planted and maintained so as to form a continuous,

unbroken, solid visual screen which will reach the required height within one (1) year after the time of planting.

- F. **Vines.** Vines not intended as ground cover shall be a minimum of two feet (2') in height immediately after planting and may be used in conjunction with fences, screens or walls to meet landscape screening requirements.
- G. **Grass.** Grass areas shall be sodded, plugged, sprigged, hydro-mulched or seeded. However, solid sod shall be used in swales, on earthen berms or in other areas subject to erosion.
- H. **Ground Cover.** Ground cover used in lieu of grass in whole and in part shall be planted in such a manner as to present a finished appearance and reasonably completed coverage within one (1) year of planting.
- I. **Berms.** Earthen berms shall have side slopes not to exceed 33 percent or 3:1 slope. All berms shall provide necessary drainage provisions which shall also be shown on any required site drainage plans.
- J. **Obstruction Prohibited.** All placement of landscaping materials, with the exception of turf and grass covered areas, shall be designed so that any interference with pedestrians loading and unloading in designated parking areas is minimized; and so that the normal parking of vehicles and opening of doors in designated parking areas will not open into or damage the landscaping materials.
- K. **Height.** For purposes of this sub-section, "height" is measured from the root crown or, if the plant is in a container, from the soil level in the container.

(b) Xeriscape Landscaping:

- (1) Xeriscape landscaping is an innovative, comprehensive approach to landscaping to promote water conservation. Xeriscape landscaping incorporates seven basic principles: planning and design, soil analysis, appropriate plant selection, practical turf areas, efficient irrigation, use of mulches and appropriate maintenance.
- (2) In order to reduce excessive water use, Xeriscape landscaping is encouraged. The total square footage of the required landscape area may be reduced by twenty percent (20%) if all landscaping materials have lower water demand, as identified by the Texas A&M Extension Service.

(c) Distance from overhead electric distribution lines.

- (1) Large and medium trees must be planted a minimum of 30 feet from the closet point of an overhead electric distribution line.

(d) Adequate space. All trees must be planted with adequate space to allow unobstructed growth to maturity.

- (1)

(e) Protection of Landscape Areas

- (1) **Protection of Landscaping.** Required landscape areas must be protected from vehicular traffic through the use of concrete curbs, or other permanent barriers. Vehicular wheels shall be prevented from extending into landscaped areas.

(2) **Nonresidential Development**

- A. During any construction or land development, the developer shall clearly mark all trees to be preserved on site and may be required to erect and maintain protective

barriers around all such trees or group of trees. No living trees greater than eight inches (8") in caliper may be cut, destroyed or damaged on the development site until approved as part of the landscape plan.

- B. The developer shall not allow the movement of equipment or the storage of equipment, materials, debris or fill to be placed within the drip line of any trees.
- C. During the construction stage of development, the developer shall not allow the cleaning of equipment or material under the canopy of any tree or group of trees to be preserved. The developer shall not allow the disposal of any waste material such as, but not limited to, paint, oil, solvents, asphalt, concrete or mortar under the canopy of any tree or group of trees to be preserved.
- D. No attachments, nails, screws or wires of any kind, other than those of a protective nature, shall be attached to any tree.

(3) Residential Development

- A. Prior to any land development, the developer shall clearly mark all trees to be preserved on site and may be required to erect and maintain protective barriers around all such trees or groups of trees. No living trees greater than eight inches (8") in caliper may be cut, destroyed or damaged on the development site until approved as part of the preliminary plat.
- B. No land may be proposed for development within twenty-four (24) months of having been cleared for agricultural purposes.
- C. During the construction stage of development, the developer shall not allow the cleaning of equipment or material under the canopy of any tree or groups of trees to be preserved. The developer shall not allow the disposal of any waste materials such as but not limited to paint, oil, solvents, asphalt, concrete or mortar under the canopy of any trees or groups of trees to be preserved.
- D. No attachments, nails, screws or wires of any kind, other than those of a protective nature, shall be attached to any tree.

(f) Irrigation Requirements.

(1) General.

- A. All landscape irrigation shall be designed by a registered licensed irrigator.
- B. The owner shall be responsible for the health and vitality of plant material through irrigation of all landscaped areas and plant materials, and shall
  - 1. Provide a moisture level in an amount and frequency adequate to sustain growth of the plant materials on a permanent basis.
  - 2. Be in place and operational at the time of the landscape inspection for Certificate of Occupancy.
  - 3. Be maintained and kept operational at all times to provide for efficient water distribution.

(2) Irrigation Methods

- A. Landscaped Areas. One of the following irrigation methods shall be used to ensure adequate watering of plant material in landscaped areas:
  - 1. **Conventional System.** An automatic or manual underground irrigation system which may be a conventional spray or bubbler type heads.

2. ***Drip or Leaky-Pipe System.*** An automatic or manual underground irrigation system in conjunction with a water-saving system such as a drip or a leaky pipe system.
  3. ***Temporary and Above Ground Watering.*** Landscape areas utilizing xeriscape plants and installation techniques, including areas planted with native grasses and wildflowers, may use a temporary and above ground system, and shall be required to provide irrigation for the first two growing seasons only.
- B. **Natural and Undisturbed Areas.** No irrigation shall be required for undisturbed natural areas or undisturbed existing trees.

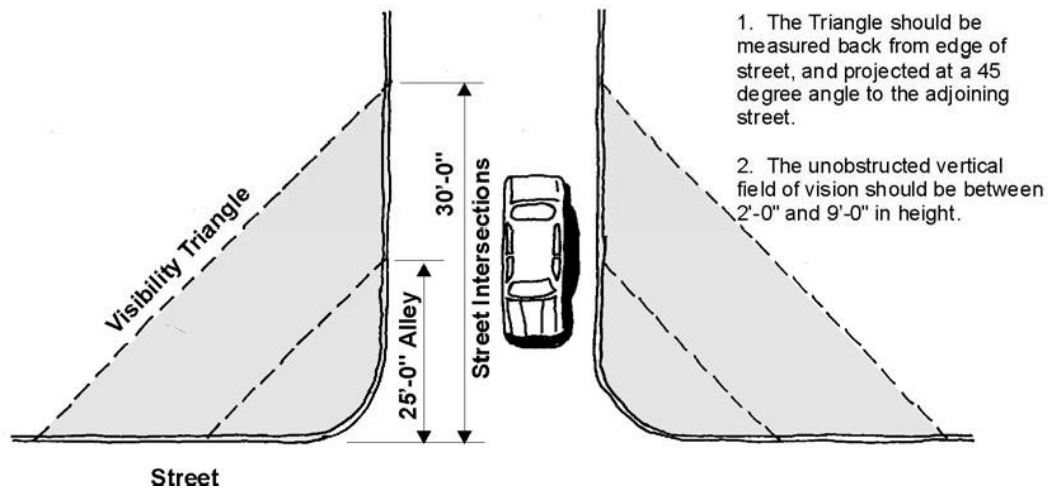
#### **Sec. 14.806      Public Right Of Way Visibility**

(a) **Visibility Triangles.** A landscape plan showing the plan of the street on both sides of each proposed drive/street to the proposed development with the grades, curb elevations, proposed street/drive locations, and all items (both natural and man-made) within the visibility triangles as prescribed below shall be provided with all site plans, if they are not on engineering plans that are submitted at the same time. This plan shall show no horizontal or vertical restrictions (either existing or future) within the areas defined below.

(b) **Visibility Triangles – Defined.** No fence, wall screen, billboard, sign face, tree or shrub foliage, berm, or any other item, either man-made or natural shall be erected, planted, or maintained in such a position or place so as to obstruct or interfere within the following minimum standards; however, on non-residentially zoned lots, a single pole for mounting a sign may be placed within this area provided the pole does not exceed 12-inches in diameter, and provided every portion of the sign has a minimum height clearance of 9 feet:

1. Vision at all intersections which intersect at or near right angles shall be clear at elevations between twenty-four (24) inches and nine (9) feet above the top of the curb elevation, within a triangular area formed by extending the two curb lines from their point of intersection, for the following minimum distances for the applicable intersection, and connecting these points with an imaginary line, thereby making a triangle. If there are no curbs existing, the triangular area shall be formed by extending the property lines from their point of intersection for a distance as prescribed below, and connecting these points with an imaginary line, thereby making a triangle as shown below.
2. Intersection of **Two Public Streets** – the minimum required distance from the curb shall be 30 feet and the minimum distance from the property line on streets without a curb shall be 20 feet.
3. Intersection of a **Public Street and an Alley** – the minimum required distance measured from the property line shall be 15 feet, or 25 feet from street curb.
4. Intersection of **Private Drive and Public Street** – the minimum required distance from the curb shall be 15 feet and the minimum distance from the property line on streets without a curb shall be 10 feet.
5. Intersection of **Private Drive and an Alley** – the minimum required distance measured from the property line shall be 10 feet.

(c) Sight Distance Requirements. The City hereby adopts the standards for both vertical and horizontal sight distance requirements set forth in the 1984 Edition of AASHTO Green Book, "A Policy on Geometric Design of Highways and Streets" for the construction of both public street intersections and private drive intersections, unless otherwise approved by the City Engineer. If, in the opinion of the City Engineer, a proposed street or drive intersection may not meet these standards, additional engineering information exhibiting how the standards have been addressed may be required for submission and approval by the City's Engineer.



#### **Sec. 14.807      Completion of Landscaping**

(a) In Accordance with Approved Plans

Except as otherwise provided in *Subsection 7.2*, all landscaping must be completed in accordance with the approved landscape plan before a Certificate of Occupancy may be issued for any building on the lot.

(b) Escrow and Assurance

If, due to circumstances beyond the property owner's control, the required landscaping cannot be installed prior to completion of the building and if the property owner provides the building official with documented assurance that the landscaping will be completed within six months and the funds required to complete the project are placed in escrow with the City, the building official may issue one six-month temporary Certificate of Occupancy and permit the property owner to complete his landscaping during the six month period. For purposes of this Subsection, "documented assurance" means a copy of a valid contract to install the landscaping in accordance with the landscape plan within the six month period. The City shall hold the funds in escrow until such time as the landscaping is completed in accordance with the approved plan.

(c) Forfeiture of Escrow

If a temporary Certificate of Occupancy is issued under *Subsection 7.2*. and, at the end of the six month period, no permanent Certificate of Occupancy has been issued because the landscaping has not been installed in accordance with the landscape plan, the property owner shall be deemed in violation of this ordinance, the funds placed in escrow shall be forfeited, and the City shall issue a citation for said violation, unless an extension is granted by the City Manager.

#### **Sec. 14.808      General Maintenance**

(a) Maintenance Requirement

(1) Maintenance of Landscaping

A. The owner, tenant and/or their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping. The owner, tenant and/or their agent is responsible for regular mowing, edging, pruning, fertilizing, watering, weeding and other such activities common to the maintenance of landscaping.

B. All required landscaping shall be maintained in a neat and orderly manner at all times. Landscaped areas shall be kept free of trash, litter, weeds and other such material or plants not a part of the landscaping. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year.

(2) Replacement of Dead Plant Materials. Plant materials which die shall be removed and replaced with plant material of similar variety and size within sixty (60) days. Trees with a trunk diameter in excess of six inches (6") measured twenty-four inches (24") above the ground may be replaced with ones of similar variety having a trunk caliper of no less than three inches (3") measured twenty-four inches (24") above the ground. A time extension may be granted by the building official for conditions relating to a season of the year per the requirements of this section.

(b) Enforcement. Failure to maintain any landscape area in compliance with this section is considered a violation of this Ordinance and shall be subject to penalties of this Ordinance. If at any time after the issuance of a certificate of occupancy the approved landscaping is found to be in nonconformance to the standards and criteria of this section, the building official or designee shall issue notice to the owner, tenant and/or their agent citing the violation and describing the action required to comply with this section.

(c) Utility Lines and Rights-of-Way. Any damage to utility lines resulting from the negligence of the property owner, his agents, or employees in the installation and maintenance of required landscaping in a utility easement is the responsibility of the property owner. If a public utility disturbs a landscaped area in a utility easement, it shall make every reasonable effort to preserve the landscaping materials, and return them to their prior locations after the utility work. If, nevertheless, some plant materials die, it is the obligation of the property owner to replace the plant materials.



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## ARTICLE 14.900 TREE Conservation

### Sec. 14.901 General Provisions

(a) Purpose. The purpose of this ordinance is to promote site planning which furthers the preservation of trees and natural areas; to protect trees during construction; to facilitate site design and construction; contribute to the long-term viability of existing trees; and to prohibit clear cutting of trees. It is the further purpose of this ordinance to achieve the following broader objectives:

1. Prohibit the clearing of trees and natural areas.
2. Protect and increase the value of residential and commercial properties within the City as well as forest value.
3. Maintain and enhance a positive image, which will encourage further development in the City.
4. Protect healthy quality trees and promote, enhance the ecological, environmental and aesthetic qualities of the City in future development.
5. To encourage the increase of arboreal elements in design plans so as to improve both aesthetic and healthful conditions within the City.
6. To further the preservation of trees and natural areas by protecting them during the planning, site design, construction and maintenance phases of any residential or commercial development within the city of Lancaster, Texas.
7. To retain the optimum number of trees on any development site.

(b) Application: Article 14.900 applies to all property in the city except for:

1. Lots smaller than two acres in size that contain single-family or duplex uses in residential districts.
2. Lots in an overlay district or a planned development district with tree preservation regulations that vary appreciably from those in this article, as determined by the ~~landscape administrator~~ Director of Development Services or designee.

Option A:

(c) In this section, a tree removal property one acre or less, in a residential district is considered to be vacant when an application is made for a demolition permit for a single family or duplex structure.

Option B:

In this section, a tree removal property one acre or less, in a residential district is considered to be vacant when an application is made for a demolition permit for a single family or duplex structure.

1. If the developable area exceeds 70% of the lot then any inches removed beyond the 70% would be subject to mitigation.

(b)

**NOTE:**

- The change from Preservation to Conservation makes the ordinance broader, encompassing and comprehensive.
- Section 5 will no longer be applicable with the adoption of the new ordinance.
- Since the City does not have a Landscape Architect on board, the Director of Development Services or designee is charged with overseeing the implementation of this ordinance.
- Application section at the front end of the ordinance provide needful information to lessen any confusion as to where the Tree Conservation applies
- Option A & B offer the City alternatives to either have residential property owners with one (1) acre or less completely clear their residential property without mitigation or obtain a permit when developable area exceeds 70% subject to mitigation

**Sec. 14.902 Definitions for Tree Preservation**

For the purpose of this ordinance, certain words or terms applicable hereto are hereinafter defined. Words and terms used in this ordinance, but not defined in this Article shall have the meanings ascribed thereto in the Lancaster Development Code, or other ordinances of the City. Words and terms defined in two ordinances shall be read in harmony unless there exists an irreconcilable conflict in which case the definition contained in this ordinance shall control. For the purpose of this ordinance the Director of Development Services or designee shall have interpretive authority to use commonly accepted definitions and/or to utilize generally accepted professional standards when any such conflict cannot otherwise be resolved.

***Agricultural Use.*** The use of land to produce plant or animal products, such as the growing of crops, raising and pasturing of livestock, timber production, Christmas tree, or farming.

***Administrative Official.*** Provisions of this Section shall be administered by the ~~Landscape Administrator~~, **Director of Development Services or designee**, who shall be appointed by the City Manager.

***ANSI.*** American National Standards Institute; standards used by the horticulture and landscape professionals to measure and evaluate trees.

***Bark Protection.*** Where a protected tree remains in the immediate area of intended construction, the tree shall be protected by enclosing the entire circumference of the tree with approved padding material and 2" x 4" lumber encircled with wire or any other method approved by the Landscape Administrator or designee. The intent is to protect the bark of the tree against incidental contact or damage by large construction equipment.

***Boring.*** Boring of utilities shall be required in those circumstances where it is not possible to trench around the critical root zone of the protected tree. When required, the length of the bore shall be the width of the critical root zone at a minimum depth approved on site by ~~Landscape Administrator~~ **Director of Development Services** or designee.

***Buildable Area.*** That portion of a building site exclusive of the required yard areas on which a structure or building improvements may be erected and including the actual structure, driveway, parking lot, pool and other construction as shown on a site plan.

**Buffer Zone.** Buffer zone is a method of screening or separating adjacent land use areas, which are improved with predominate non-residential use and whose side or rear lines are adjacent to a residential district or use and not separated by a public street or roadway. These buffers, when required, should be densely maintained with trees and shrubs and be a minimum of twenty-five (25') feet in depth.

**Builder/Contractor (New Construction Only).** A builder or contractor who has purchased land or lots for construction with intent to sell is subject to all requirements specified herein.

**Building Envelope (BE).** Defined as that area surrounding and adjacent to the building pad that may be cleared to allow for all necessary construction equipment and construction. Residential BE shall not exceed ten (10') feet from the Building Pad. Commercial BE shall be determined by the ~~Landscape administrator~~ **Director of Development Services or designee** for the necessary tree protection. All existing natural vegetation beyond the building envelope shall be protected by protective fencing.

**Building Pad.** The actual foundation area of a building.

**Caliper.** The diameter of a tree measured is as follows: Height to measure depends on size: 0-4" (zero to four inches), measured at 6" (six inches) from natural ground level. Trees 4" (four inches) to transplantable size are measured at 12" (twelve inches) from natural ground level. All others at 4.5' from the ground level in Diameter at Breast Height (\*see ANSI standard).

**CLASS 1 TREE** means all specimen trees; except Eastern Red Cedar and Osage Orange, and all trees located in a primary natural area, floodplain, or geologically similar area measured to fifty feet above the escarpment zone.

**CLASS 2 TREE** means a tree that is not otherwise classified.

**CLASS 3 TREE** means Arizona ash, black willow, cottonwood, Eastern Red Cedar under 24 inches, crabapple, honeylocust, mimosa, mulberry, sweetgum, ornamentals, Osage Orange under 24 inches, pinus spp., Siberian elm, and Silver maple larger than 8" in Diameter

**Clear-Cutting.** The removal of all of the trees or a significant majority of the trees within an area of land.

**Conservation Design.** A development design or pattern intended or having the effect of creating, retaining or preserving environmentally sensitive areas, natural habitats, wooded areas or areas of natural beauty in greater amount than would be otherwise be provided using Conventional Design or Traditional Neighborhood Design. Techniques used to achieve this result principally include the grouping together and/or concentration of buildings into clusters, reduction in lot size, reduction in paved areas and/or streets, and the use of shared common areas.

**Conventional Design.** A development design or pattern characterized by homes and non-residential buildings located on large individual lots, physical separation of buildings, segregation of land uses, and a predominance of individual yards within privately owned lots rather than the use of commonly-owned open areas. This pattern frequently features long block lengths, wide streets, cul-de-sacs, alleys and an emphasis on transportation service via the privately owned automobile.

**Critically Alter, Critical Alteration.** Uprooting or severing the main trunk of a tree, or any act which causes or may reasonably be expected to cause a tree to die. This includes, but is not limited to: damage inflicted upon the root system of a tree; a change in the natural grade above the root system of a tree, storage of materials, or the compaction of soil above the root system of a tree; an application of herbicidal chemical or the misapplication of beneficial chemicals; excessive pruning; placement of non-permeable pavement over the root system of a tree; or trenching within the primary root zone. Additionally, a tree may be

considered critically altered if more than 25% of the primary root zone is altered or disturbed at natural grade, or more than 25% of the canopy is removed.

**Critical Root Zone (CRZ).** The area of undisturbed natural soil around a tree defined by a circle with a radius equal to the distance from the trunk to the outermost portion of the drip line. If CRZ is compromised by site conditions, such as but not limited to, roads, sidewalks, existing buildings, utility easements, etc., the CRZ will be determined by the ~~Landscape Administrator~~ **Director of Development Services** or designee.

**Cut/Fill.** Areas where the natural ground level has been excavated (cut) or raised (fill).

**Drip Line.** A circular line, which follows the outermost portion of the canopy of a tree and extending to the ground.

**Diameter at Breast Height (DBH).** The DBH is measured four and one-half (4.5') feet from natural ground level.

**FEMA 100-Year Flood Plain.** The area designated as being within the one hundred year flood plain on the Federal Emergency Management Agency Flood Insurance Rate Map (FIRM) as of the effective date of this Ordinance. The boundary may be verified and established through field surveys based on elevation. Any changes made by FEMA to the 100-year flood plain boundary after the effective date of this Ordinance due to filling of the flood plain, channelization, or other drainage improvements shall not reduce the area in which tree preservation, replacement or protection requirements apply.

**Grade Change.** Any changes in ground level or soil compaction within the area just beyond the spread of the branches will damage the roots.

**Ground Level Cuts.** Where protected tree removal is allowed through exemption or by tree removal permit, and the root system is intertwined with protected trees which are intended to be saved, the tree shall be removed by flush cutting with the natural level of the surrounding ground. If stump removal is desired stump grinding shall be allowed upon approval of the ~~Landscape Administrator~~ **Director of Development Services or designee.**

**Grubbing.** Excavating or removing a significant part of the root system.

**Tree Health.** The condition of the tree, including structural integrity, pest and/or pathogen related problems.

**Residential Homestead.** Owners of property zoned as residential, who reside at the property as their primary residence. This term does not include properties zoned "MF" Multi-Family Residential district.

**Limits of Construction.** Delineation on the site plan defining the areas within which all construction activity may occur.

**Municipal/Public Domain Property.** Property in which title is held in the name of a governmental entity. Proper examples of this would include City Hall, public parks, Corps of Engineers' property, State of Texas R.O.W., library, fire stations, water tower sites, public schools or similar properties.

**Open Space.** Open Space means a public or semi- public space, including common areas or parks that:

- Is open and unobstructed from its lowest level to the sky. (Vegetation and complimentary amenity structures such as open pavilions shade structures, picnic tables, playground equipment, bicycle racks drinking fountains, trash receptacles, goal posts, lighting etc. shall not be considered obstructions.)
- Is accessible to, designed for, and intended for the common use or enjoyment of the general public or the residents/occupants of a building, neighborhood or subdivision.

- Is used for recreation, resource protection, amenity or buffer yard/greenbelt purposes.
- Is not an existing or future right-of-way (R.O.W.).
- Is not part of the roof of any building

**Tree, Preserved.** A protected tree shall be considered preserved only if a minimum of 75% of the critical root zone is maintained at undisturbed natural grade and not more than 25% of the canopy is removed due to building encroachment. The canopy shall retain its natural form and integrity.

**Protective Fencing.** Protective fencing shall be orange vinyl construction fencing or other material approved by ~~Landscape Administrator~~ **Director of Development Services** or designee with a four-foot (4') approximate height adequately supported.

**Pruning, Allowed.** Approved pruning of protected tree(s) by ~~Landscape Administrator~~ **Director of Development Services or designee** in cases where tree(s) must be strategically pruned to allow construction or demolition of a structure. When allowed, all pruning shall be in accordance with approved arboricultural technique and/or guidelines established by the ~~Landscape Administrator~~ **Director of Development Services** or designee.

**Pruning Permit.** Permit required for all utility, franchise and city projects. No fee is required.

**Thinning, Selective.** The removal of selected trees from within a forested area. The purpose of Selective Thinning is to improve the health and natural growth form of remaining trees or remove invasive and sometimes non-native species.

**Top Soil.** Top layer of soil native to the site.

**Traditional Neighborhood Design.** A development design or pattern that is characterized by a mixture of housing types and densities, a mixture of land uses including retail, office, and civic uses, reduced paving and street sizes, and that affords ease of pedestrian access. This design typically features a gridiron street pattern, short block lengths, narrow streets, reduced building setbacks from the street and close proximity of residential and non-residential buildings and uses.

**Tree.** Any self-supporting woody perennial plant, which will attain a trunk diameter of two inches (2") or more when measured at a point four and one-half feet (4.5') above ground level and normally an overall height of at least fifteen feet (15') at maturity, singular or multi-trunk. The diameter of a multi-trunk tree shall be determined by adding the total diameter of ½ diameter of each additional trunk to the diameter of the largest trunk.

**Tree Board.** The Tree and Landscape Advisory Board members shall be appointed by the City Council. The Board will meet as needed, to review and monitor the Tree Protection and Landscape Ordinances, and to advise the ~~Landscape Administrator~~ **Director of Development Services or designee**, Park Board, City Council, Planning & Zoning Commission and citizens.

**Tree Diversity.** A condition wherein no single species of tree or plant material comprises more than 30% of the cumulative total of plantings on a site or of replacement trees required due to mitigation and remediation.

**Tree, Heritage.** Any tree planted and related to the heritage of the community, individual or homestead as designated by City Council

**Tree, Historic.** Any tree that has been identified as having historical value (species, history, uniqueness) by City Council.

**Tree, Park.** Trees located in public parks and all areas owned by the City to which the public has free access to as a park.

**Tree, Protected.** A tree of any species that has a minimum diameter of six (6") that is not classified as unprotected in this article. The caliper of a multi-trunk tree shall be

determined by adding the total diameter of the largest trunk to one-half (1/2) diameter of each additional trunk (refer to ANSI).

**Tree, Specimen.** Means a healthy tree whose age, size, unique type, or natural character are of special importance to the city, and meets the following species and size requirements:

- (a) *Post oaks with a minimum diameter of 12 inches*
- (b) *Trees of the following species having a minimum diameter of 24 inches: American elm, cedar elm, eastern red cedar, osage orange, all other oaks, pecans, all walnut species.*

**Tree, Street.** Trees, shrubs, and all other woody vegetation on land lying between property lines planted at recommended intervals with consideration of visibility triangle on either side of all streets, avenues, right-of-ways or entrances to the City. Tree species and planting techniques shall be selected to create a unified image for the street, provide an effective canopy, avoid sidewalk damage and minimize water consumption.

**Tree, Understory.** A tree which the City has determined has significant positive characteristics worthy of preservation and that does not typically attain height greater than thirty (30') feet.

**Tree Survey.** The Tree Survey is the heart of the Tree Preservation Ordinance. Its purpose is not to penalize, but to aid in protecting our valuable natural resources during development and construction. The Tree Survey will also help determine the quantity of trees, if any, that may be removed or cannot be safely and adequately protected during the street utility, engineering/drainage, and construction phases of development.

**Tree Topping.** The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this ordinance at the determination of the ~~Landscape Administrator~~ **Director of Development Services** or designee.

**Tree, Canopy or Shade.** Canopy or Shade Tree means a species of tree which normally bears crown foliage no lower than six feet above ground level upon maturity.

Option A:

***Unprotected Tree means the following:***

- (a) Callery pear (all cultivars)
- (b) Chinaberry
- (c) Mesquite
- (d) Chinese Tallow
- (e) Hackberry & Sugarberry Species
- (f) Ilex Species (except for yaupon holly and Possumhaw holly)
- (g) Palm (all plants in *Palmae*)
- (h) Tree-of-heaven or Ailanthus
- (i) Other trees listed on the Texas A&M invasive plant list

Option B:

***Unprotected Tree means the following:***

- (a) Callery pear (all cultivars)
- (b) Chinaberry
- (c) Chinese Tallow
- (d) Eastern Red Cedar
- (e) Ilex Species (except for yaupon holly and Possumhaw holly)
- (f) Palm (all plants in *Palmae*)
- (g) Tree-of-heaven or Ailanthus
- (h) Other trees listed on the Texas A&M invasive plant list

Option C:

***Unprotected Tree means the following:***

- (a) Callery pear (all cultivars)
- (b) Chinaberry
- (c) Mesquite
- (d) Eastern Red Cedar
- (e) Chinese Tallow
- (f) Hackberry & Sugarberry Species
- (g) Ilex Species (except for yaupon holly and Possumhaw holly)
- (h) Palm (all plants in *Palmae*)
- (i) Tree-of-heaven or Ailanthus
- (j) Other trees listed on the Texas A&M invasive plant list

**NOTE:**

- By putting trees into a class system it allows to add more value to the biggest and best trees while not putting as much value on trees that are viewed as less desirable.
- Power to designate Historic and Heritage trees is proposed to be vested in the City Council
- As listed below, the new ordinance will have specific trees that are not protected making the unprotected tree definition more clear and specific
- The 3 options for a non-protected tree list makes it easier to have an unprotected tree list as opposed to a protected tree list because it's fewer trees and you do not know all the different tree species you have in the city.
- Option C has all the species in Option A & B, Option B excludes Hackberry & Sugarberry Species and mesquites and Option A exclude eastern red cedar

**Sec. 14.903 Permit Required**

A tree removal permit shall be obtained from the ~~Landscape Administrator~~ **Director of Development Services** or designee before any person, directly or indirectly, shall clear cut/remove, destroy or do selective thinning on any protected tree(s) situated on property regulated by this ordinance, except as specified herein (definitions of clear cutting, selective thinning, and ground level cuts).

- (a) New Development/Construction. In the event it becomes necessary to remove a tree for development or construction, a Tree Removal Permit shall be required. New construction shall



include Residential, Non Residential, Special Developments, Planned Developments and individual contractor builders shall be required to meet the criteria herein specified and shall require a Tree Removal Permit for the removal of any Protected Tree. During platting, a permit shall be issued after preliminary plat approval by Planning and Zoning Commission.

- (1) Submission of a Tree Removal Permit Application to the City shall authorize the ~~Landscape Administrator~~ **Director of Development Services** or designee to conduct field inspections of the site as necessary to meet the provisions of this Article and any published Guidelines. After thorough review of the Tree Removal Permit Application and accompanying documents, the ~~Landscape Administrator~~ **Director of Development Services** or designee will approve as submitted, approve with conditions, or disapprove the applications.
- (2) All developers and/or builders, which have not submitted preliminary plats as of the effective date of this ordinance shall be subject to the requirements for tree protection and replacement specified in this ordinance.
- (3) All areas within public R.O.W., utility easements or drainage easements, as shown on an approved Preliminary Plat and areas designated as cut/fill on the master drainage construction plan approved by the ~~Landscape Administrator~~ **Director of Development Services or designee**, shall be subject to the tree protection requirements specified herein except as provided for in ~~Sub-section 5.8 Street Trees and Open Space. Sec. 14.908 (b).~~

(b) Municipal/Public Domain Property. All municipal or public domain property shall be subject to this Article regarding protection and replacement specified. A Tree Removal Permit shall be required with fee exemption for the removal of a Protected Tree. Any Protected Tree to be removed must be shown on construction plans approved by the ~~Landscape Administrator~~ **Director of Development Services** or designee.

(c) City/Franchise for Existing R.O.W. and Public Easements. All construction and maintenance activity within public R.O.W. or easements shall be subject to the requirements for tree protection and replacement specified in this ordinance.

- (1) **City Projects**. The City shall be subject to the requirements for tree protection and replacement on all projects. A Tree Removal Permit shall be required with fee exemption for the removal of a Protected Tree.
- (2) **Pruning**. The owners of all trees adjacent to public R.O.W. shall be required to maintain a minimum clearance of fourteen feet (14') above the traveled pavement or curb of a public street. Said owners shall also remove all dead, diseased or dangerous trees, or broken or decayed limbs, which shall constitute a menace to public safety. (The City shall also have right to prune trees overhanging within the Public R.O.W. which interfere with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign or as necessary to preserve the public safety.)
- (3) **Stump Removals**. All stumps of street and park tree shall be removed below the surface of the ground so the top of the stump shall not project above the surface of the ground.
- (4) **Franchise and Other Utility Companies**. All utility company projects shall be subject to the requirements for tree protection and replacement specified in this Ordinance. Companies shall meet beforehand on site with ~~Landscape Administrator~~ **Director of Development Services** or designee, and obtain pruning permit before work is begun. Pruning activities by a utility company must comply with Definitions on Pruning, allowed, Pruning required, and Tree Topping. Prior to beginning any pruning not requested by the owner of the tree; the contractor shall submit a Tree Pruning Request for approval (see definitions). A Tree Removal Permit must be



obtained prior to the removal of a protected tree. This permit must be accompanied by current pictures, site plan or construction plan meeting the site plan requirements specified in this Ordinance.

- A. Utility companies may prune trees as necessary to re-establish disrupted electric service without obtaining a permit.
- B. Compliance with this ordinance shall be amended to and included with all future revision of all franchise agreements.
- C. All trenching shall be designed to avoid trenching across the critical root zone of any protected tree. Although this is not intended to prohibit the placement of underground service such as electric, phone, gas, etc., the placement of these utilities is encouraged to be located outside of the critical root zone of protected tree(s).
- D. Pictures of work site shall be submitted with all permit applications and is a requirement for procurement prior to work beginning.

Option A:

(c) Agricultural Owners. Any property zoned Agriculture that applies for a zoning change within 24 months in which 50% or more of the trees on the property have been removed will be required to mitigate or replace said trees in accordance with Article 14.900

Option B:

Agricultural Owners. Any property zoned Agriculture that applies for a zoning change within 12 months in which 50% or more of the trees on the property have been removed will be required to mitigate or replace said trees in accordance with Article 14.900

Option C: Remove all together.

(d) Permit Expiration. Permits for tree removal shall become void one hundred eighty (180) days after the issue date on the permit.

**NOTE:**

- The above are 3 options to amend this ordinance to allow more flexibility for the landowner while trying to protect trees from being clear-cut prior to development.
- Tree Preservation regulations options on residential properties are found in Sec14.900 (b).

**Sec. 14.904 Submittal Requirements**

Prior to removing a protected tree(s) and receiving a tree removal permit, the applicant shall submit a Tree Removal Permit Application and pay the application fee to the City. The applicant shall also submit a written reason for the request to remove the Protected Tree(s), as well as the following information as applicable:

(a) Tree Survey

- (1) **Purpose.** The Tree Survey is vital to the Tree Preservation Ordinance. Its purpose is to aid in protecting the City's valuable natural resources during all phases of development and construction. Additionally, the Tree Survey will help identify; the trees to be mitigated on the site that may be damaged in the construction zone; determine the trees that must be accommodated in the development of essential streets, utilities and building construction, and in the adjustment of these streets, utilities and building envelopes, to protect as much of the native vegetation as possible.
- (2) **Scope.** A Tree Survey shall be conducted on all residential and non-residential tracts and be current to within the twenty-four (24) months immediately prior to submission

of and included with the following:

- A. Preliminary Plat
- B. Re-plat
- C. Final Plat/Approval
- D. Site Plan Review
- E. Application for Building Permit
- F. Street, Utility, and drainage plans
- G. Concept Plan for a Planned Development

**(3) Detail**

- A. The Tree Survey shall be performed by a degreed urban forester, certified arborist, registered surveyor or qualified personnel as approved by the Director of Development Services or designee.
- B. The Tree Survey shall be accurate and include: Location, size (DBH), species, and trees with health problems (structural integrity, pest and/or pathogens) with a six-inch (6") or greater caliper (see definition). The Tree Survey information shall be compiled in a tabular format with each Tree identified by a number corresponding to a numbered tree on the site Plan.
- C. The entire parcel being proposed for development should be included in the Tree Survey.
- D. Once the Tree Survey has been accomplished and submitted to the City, all Trees on the Tree Survey shall be classified as Protected Trees, with the exception of those classified as Unprotected Tree species under this Ordinance.

(b) Commercial Development. Additional requirements for the tree survey on commercial tracts of

land shall require a complete tree survey, which shall include the following:

- (1) All areas within public R.O.W.,
- (2) Public utility or drainage easements shown on an approved Final Plat, and
- (3) Fire lanes, parking and drive areas, exclusive of the building pad, shall be subject to the tree protection and replacement requirements specified herein.

(c) Aerial Photos and Sampling. With the submittal of a concept plan or preliminary plat, whichever occurs first for property containing large, heavily wooded areas, the ~~Landscape Administrator~~ Director of Development Services or designee may, in lieu of a tree survey, authorize the submittal of an aerial photograph accompanied by a transparent plan of the development at the same scale as the photograph, showing all non-disturbance areas and proposed exemption areas where no trees will be critically altered.

For heavily wooded areas where development activity and disturbance is intended or likely, the ~~Landscape Administrator or designee~~ Director of Development Services or designee is authorized, but not required, to accept sampling of the property in lieu of a tree survey for all or any part of a property, provided that a tree survey of all other areas is submitted to the ~~Landscape Administrator~~ Director of Development Services or designee prior to any grading or construction. Said Sample or sampling techniques should be representational of the site or wooded area and should comprise at least 15% of the total site or wooded area and the sampling technique shall be approved by the Director of Development Services or designee prior to conducting the sample.

The ~~Landscape Administrator~~ Director of Development Services or designee may approve

the submission of photographs or samples in phases for a multiphase project.

- (d) Tree canopy cover assessment for old-field and undeveloped lots, two acres or larger, in early succession stages will constitute a 50% reduction of Class 3 trees when:
- (1) *at least 60 percent of the trees in the stand are Class 3 and unprotected species; and*
  - (2) *the average tree diameters is less than 12" in diameter.*
  - (3) *The tree canopy cover assessment excludes areas within 50 feet of a 100-year floodplain, 50 feet of a wetland, 50 feet of an escarpment zone, and 150 feet of a stream bank.*
  - (4) *The trees in the stand is designated in an age class of 50 years or less by the **Director of Development Services or designee** based on site and historic data*
  - (5) *The stand is assessed and surveyed using tree sampling methods which provide general species quantity and size approved by the Director of Development Services or designee.*
- (e) Affidavit of No Protected Trees. If a property contains no Protected Tree species, or if construction, grading, trenching or related activities are not to be performed in an area containing protected trees, the applicant may submit an Affidavit of No Protected Trees in lieu of a tree survey. This affidavit shall act in lieu of a tree survey upon a determination by the ~~Landscape Administrator~~ **Director of Development Services or designee** that no protected trees exist on the site. The ~~Landscape Administrator~~ **Director of Development Services or designee** shall review the Affidavit. The Affidavit shall be denied or approved when determined if the property contains protected tree(s) or non-protected tree(s) by the ~~Landscape Administrator~~ **Director of Development Services or designee**.
- (f) A Tree Preservation Plan. A tree preservation plan shall be submitted showing major site construction features, existing trees to remain, existing trees that may be removed, and replacement trees showing species, location, number and size. The Tree Preservation Plan information may be included on the tree survey if all information can be clearly delineated.

**NOTE:**

- The current industrial sampling standard is 25% and the proposed 15% will be middle ground between 25% industrial standard and the current City of Lancaster 5% sampling.
- The above insertion give relief to landowners that have lots that are old in-fill lots and are predominately species that are not considered a primary species.

**Sec. 14.905 Exemptions**

Any exemption shall be approved by the ~~Landscape Administrator~~ **Director of Development Services** or designee prior to removal of any tree(s). A Tree Removal Permit and tree protection and replacement requirements shall not be required under any of the following circumstances.

- (a) Public Safety. The tree endangers the public health, welfare of safety and immediate removal is required due to structural integrity concerns.
- (b) Utility Service Interruption. The tree has disrupted a public utility service due to a tornado, storm, flood or other act of nature. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.
- (d) Landscape Nursery. All licensed plant or tree nurseries shall be exempt from the tree protection and replacement requirements and from the tree-removal permit requirements only in relation to those trees planted and growing on the premises of said licensee, which are so planted and growing for the sale or intended sale to the general public in the ordinary course of said licensee's business.

(f) (e) Diseased Trees: Tree removal is permissible when a tree is infected with transmittable pathogens, damaged beyond the point of recovery, or in danger of falling as determined by the ~~Landscape Administrator~~ or designee prior to the removal of the tree.

(g) (f) Residential Property. Owners of property zoned as residential, who reside at the property and use the residence as their primary residence. Citizens of Lancaster who have a homestead within the City of Lancaster and own residential rental properties shall have an exemption on a maximum of two (2) properties for removal of Protected Trees.

(h) (g) Affidavit of No Protected Trees. See *Section 14.904(e)*.

(i) (h) Building Pad. The building foundation and an area extending ten (10') feet from the building foundation as shown on an approved Site Plan shall be exempt from tree replacement and mitigation.

**NOTE:**

- Agriculture properties regulations are covered in Section 14:903 – Permit Required
- Street trees & open space is covered in Sec. 14.908 (b).

**Sec. 14.905      Review and Approval Process**

(a) Authority for Review. The ~~Landscape Administrator~~ **Director of Development Services** or designee shall evaluate any plans required by this ordinance for determination that the applicant has made a good faith effort in saving as many protected trees as possible. An analysis prepared by the ~~Landscape Administrator~~ **Director of Development Services** or designee shall be forwarded to the Planning and Zoning Commission and the City Council for their consideration regarding denial or approval of the development. The ~~Landscape Administrator~~ **Director of Development Services** or designee shall be responsible for the review and approval of all requests for tree removal permits submitted in accordance with the requirements specified herein.

(1) Deferrals. The ~~Landscape Administrator~~ **Director of Development Services or designee** may defer the approval of a tree removal permit to the Planning and Zoning Commission for any reason. All decisions made by the Commission shall be final.

(2) Appeals. Decisions made by the ~~Landscape Administrator~~ **Director of Development Services or designee** may be appealed to the Planning and Zoning Commission. Any such appeal shall first be considered by the Tree Advisory Board. The Tree Advisory Board shall be authorized, but not required, to forward a non-binding recommendation to the Planning and Zoning Commission. All decisions made by the Planning and Zoning Commission shall be final.

(b) Fee Schedules. The ~~Landscape Administrator~~ **Director of Development Services or designee** shall establish administrative procedures necessary to facilitate the implementation and enforcement of this ordinance.

(1) Fees. All tree removal permits shall be accompanied by a payment made to the City of Lancaster in the amount established by resolution of the City Council to cover the cost of review and passed by Resolution.

**NOTE:**

- The proposed ordinance will have Director of Development Services or designee in charge of implementation of this ordinance
- The proposed ordinance provides various options such as transplanted trees, tree replacement and alternatives that enable developers to meet the requirements which nullifies the need for Sec 14.905 (c) above in the review and approval process.

Sec. 14.906 Transplanted Trees

- (a) Procedure: Established and health protected trees on a tree removal property may be transplanted within the city. The transplanting process must conform to operational and safety standards stated in ANSI A300, as amended, and with ISA Best Management Practices for Tree Planting, as amended.
- a. A protected tree that meets the requirements of this section is not considered removed, or seriously injured, if the transplanted tree is planted and maintained in a healthy growing condition.
  - b. ~~Landscape administrator~~ **Director of Development Services or designee** approval is required before beginning the transplantation for credit as a landscape tree, or for tree replacement.
  - c. The following information is required to obtain ~~landscape administrators~~ **Director of Development Services or designee** approval in this section:
    - i. An initial assessment report must be provided to the ~~landscape administrator~~ **Director of Development Services or designee** describing the transplanting practice from beginning to end, including post planting care practices.
    - ii. A tree survey or landscape plan which identifies the original and final location of the protected tree.
    - iii. Company names, contact information, and credentials of contractor performing work.
    - iv. Other information required by the ~~landscape administrator~~ **Director of Development Services or designee**.
  - d. Credit for transplanted trees.
    - i. Healthy large and medium protected trees six inches in diameter or less qualify for one inch of replacement credit for each inch of the transplanted tree.
    - ii. Healthy large and medium protected trees between 7 inches and 12 inches in diameter qualify for two-inch replacement credit for each inch of the transplanted tree.
    - iii. Health large and medium protected trees between 12 and 24 inches in diameter qualify for three-inch replacement credit for each inch of the transplanted tree.
    - iv. Health large and medium protected trees 24 inches or more in diameter qualify for five inch replacement credit for each inch of the transplanted tree.

**Credit for transplanted trees in table format**

<b>Tree Inches</b>	<b>Number of Credits</b>
<b>6" or Less</b>	<b>1</b>
<b>7" – 12"</b>	<b>2</b>
<b>12" – 24"</b>	<b>3</b>
<b>24" or More</b>	<b>5</b>

**NOTE:**

- The proposed Transplanted Tree Sec. 14.906 provides tree transplanting procedures

and the applicable credits.

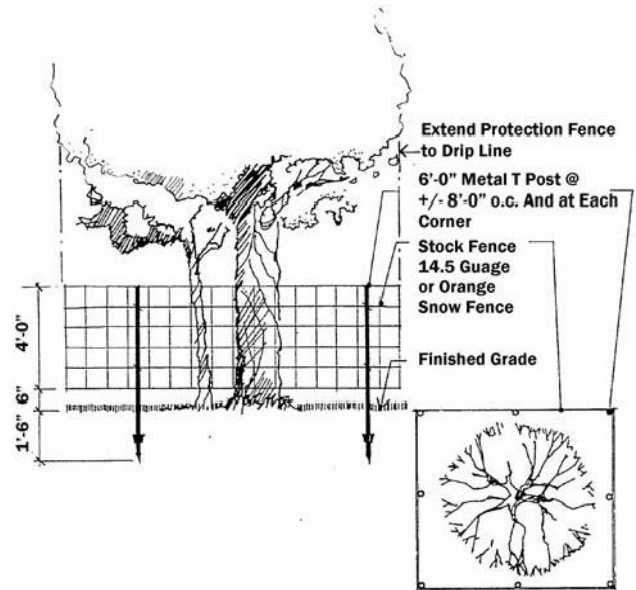
## Sec. 14.907 Guidelines for Tree Protection

A major purpose of this Section is to protect all the Protected Trees retained on the site for approved development and construction to occur.

### (a) During Construction. Minimum

requirements for the protection of all Protected Trees on the development and construction site related, but not limited to, streets, parking lots, building sites, driveways and sidewalks shall be strictly adhered to. This shall include:

- (1) Establishing a Building Envelope enclosed with approved fencing; establishing designated areas for parking all vehicles, trailers, construction equipment, related items as well as storage of all supplies and materials;
- (2) Clearly identifying designated restricted areas on construction and site plans and the project location;
- (3) Proper protection of Drip line of a Protected Tree with appropriate fencing as defined by the Director of Development or designee;
- (4) Approved bilingual (English and Spanish) signage visibly located at site;
- (5) Retention and protection of Under Story Vegetation and leaf litter during all phases of development;
- (6) Boring of any underground utilities, which passes within a Protected Tree or Critical Root Zone; and
- (7) Enactment of preventive measures to prevent grade changes of one-half inch (1/2") or more, or fill, within a Tree Protection or Critical Root Zone.



Additional protective measures may be required by the Landscape Administrator or designee as a condition of permit approval. Such conditions may be established by the publication of Tree Preservation Guidelines and/or by attaching conditions of permit approval.

(b) Trenching. All trenching shall be designed to avoid trenching across the critical root zone of any protected tree. Although this is not intended to prohibit the placement of underground service such as electric, phone, gas, etc., the placement of these utilities is encouraged to be located outside of the critical root zone of protected tree(s). Irrigation system trenching shall be placed outside the critical root zone with only the minimum required single head supply allowed

within that area placed radially to the tree trunk and shall be hand trenched with roots cleanly cut or use of air spade to reduce damage.

(c) Prohibited Activities. Prior to and during development and construction, the following activities shall be prohibited. The Landscape Administrator shall be authorized to provide more detailed explanations by publication of Tree Preservation Guidelines or by attachment of conditions to any permit issued pursuant to this ordinance. All such directions shall be strictly adhered to.

- (1) Clear cutting of trees on a property for any purpose at any time except for the exceptions provided for in *Section 14.905 Exemptions*.
- (2) Construction vehicles and equipment parking and storage around Protected Trees.
- (3) Storage, placing or disposing of construction and waste materials around Protected Trees.
- (4) Restrictions and prohibitions on unapproved grade changes that may damage or destroy Protected Trees.
- (5) Water accumulations due to construction-related activities.
- (6) Unapproved attachments to Protected Trees.
- (7) Removal of more than 25% of a Protected Tree's foliage in a given year. No pruning or topping may significantly disfigure the tree, or be done in a manner, which would reasonably lead to the death of the tree.
- (8) Any person acting to circumvent the purpose of this ordinance.
- (9) Impervious materials used in or near Protected Trees.
- (10) Unapproved fencing and bark protection methods on any construction sites in and near the Protected Tree areas.
- (11) Construction methods such as boring, grade change, trenching, and root pruning that damage or destroy Protected Trees.
- (12) Placement of fill within the drip line of any protected tree on any undeveloped property.

## **Sec. 14.907 Tree Replacement**

In the event that it is necessary to remove a Protected Tree(s) as allowed in *Section 3* above, the applicant shall be required to replace the Tree(s) being removed with quality trees..

- (a) Except as provided in this section the minimum total caliper inches of replacement trees must equal or exceed the total diameter of the protect trees removed or seriously injured as listed below:
- (1) Tree classification for mitigation
    - A. Historic & Heritage Trees: 3:1
    - B. Specimen Trees: 1.5:1
    - C. Class 1: 1:1
    - D. Class 2: .7:1
    - E. Class 3: .4:1
  - (2) Species
    - A. A replacement tree must be an approved tree determined by the Director of Development Services or designee.
    - B. For a lot or tract two acres in size or more, no one species of tree may constitute more than 30 percent of the same species.

**NOTE:**



- The above insertion is the new formula for tree mitigation based on the new tree class system.
- The formula gives certainty and clarifies tree mitigation requirements.

(b) Responsibility and Site Requirements. The Landscape Administrator or designee shall determine the agent responsible for replacement, the time frame for replacement and the location of the new trees. The replacement trees shall be located on the subject site whenever possible. However if this is not feasible, the Landscape Administrator or designee has the authority to allow the planting to take place on another property, including public property. If the Landscape Administrator approves the planting of replacement trees more than 30 days after the removal of protected trees, the applicant shall provide the Landscape Administrator with an affidavit that all replacement trees will be planted within six (6) months and maintained by the applicant for a minimum of two (2) years in good condition. Developers shall plant all the replacement trees identified on the Mitigation Plan. The Landscape Administrator or designee shall document the date of replacement trees on the reforestation plan and record for review of the 2-year commitment.

In as much as it is reasonable and feasible, replanting on the development or construction site will be encouraged in order to restore the original natural landscape character of the site.

- (1) The Director of Development Services or designee has the authority to reject any trees not meeting these standards.
- (2) One (1) 6-month extension may be approved by the Director of Development Services or designee due only to seasonal limitations that would make planting of trees impractical, and shall require an escrow deposit in an amount equal to 110% of the mitigated value.
- (3) The applicant shall be required to maintain the replacement trees in good condition for a minimum of two years. If a replacement tree dies or is damaged within the initial two- year period, the applicant shall replace it with a tree approved by the Director of Development Services or designee.

(c) Payment in Lieu of Replacement.

- (1) To the extent that tree replacement is not feasible, the Landscape Administrator or designee shall determine in accordance with the provisions provided herein, the amount of indemnification to be paid by the developer or other responsible party. Upon determination of indemnification, said payment shall be made to the City of Lancaster Reforestation and Natural Area Fund based on the following guidelines:

Option A:

- A. For Protected Trees, reparations will be made in the amount of one hundred ninety- five dollars (\$195.00) per one (1") inch DBH. The Director of Development Services or designee shall be authorized to reduce this amount in accordance with the following:

Option B: \$160.00

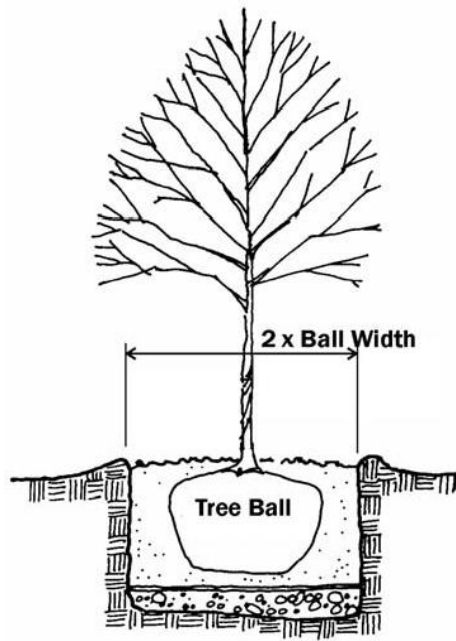
Option C: \$125.00

1. In cases when at least 50% of the required mitigation is provided by on-site or off-site tree planting, a reduction to not less than one hundred dollars (\$100) per one (1") inch DBH may be allowed.
2. A two (2") inch credit against mitigation and/or reparations may be authorized for



each inch of large tree that is preserved and designated as Specimen, Historic, Champion, or Heritage tree. Designation of Specimen, Historic, Champion, or Heritage trees not located on the same property may also be used for this credit upon review and approval of same. The property owner or responsible party for said tree designated as a Specimen, Historic, Champion, or Heritage tree shall be responsible for the care and maintenance of said tree.

3. A one (1") inch for one (1") inch credit against mitigation and/or reparations shall be authorized for the preservation of any tree provided that:
  - i. Said tree to be preserved is a minimum of six (6") caliper inches and is listed as a Class 1 tree.
  - ii. Said tree to be preserved is located in an exempted area or is otherwise free from mitigation and/or reparations requirements.
  - iii. Said tree is protected from future removal, destruction or critical alteration by:
    - The establishment of protective covenants, easements, or agreements.
4. Subsequent removal damage, or critical alteration of any tree used for credit as identified in *Sub-sections a, b or c* above shall require mitigation replacement and/or reparations in accordance with this ordinance.
- B. If any Protected and/or Replacement Tree(s) dies within two (2) years of initial planting or issuance of Certificate of Occupancy and is brought to the attention of the Director of Development Services or designee, the original permit applicant shall be subject to the same replacement fee as for a Protected Tree.
- C. Money paid in lieu of tree replacement made in compliance with this section shall be considered contributions to the LRNA Fund.
- D. The LRNA Fund shall be used for purchasing and planting trees on public property, acquiring property that shall remain in a naturalistic state in perpetuity through outright purchase or Development Rights, and assisting in the cost of administering this ordinance.
- E. The Landscape Administrator shall be authorized to temporarily defer the payment of any mitigation or reparation fees when such action is deemed to be warranted due to unique circumstances, such as when the amount of mitigation is subject to change, when a development agreement is pending, or other similar transitory circumstances. Any such deferred fee shall be rectified and paid in full prior to the filing of a plat in the County records.



**Sec. 14.908 Alternative methods of compliance with tree replacement requirements**

(a) **Mitigation.** If the landscape administrator determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsibly party to plan a replacement tree on the tree removal property the responsibly party may comply with one or more of the following requirements:

- a. Donate the replacement tree to the city's park and recreation department, with the approval of the Director of the park and recreation department
- b. The responsible party may pay for the installation of irrigation in a city park with the approval of the Director of Development Service or designee if the number of inches being planted by the Parks and Recreation Department meets a minimum of 50% of the required replacement inches.
- c. Plant the replacement trees on another property in the city, the responsible property must obtain the written approval of the following:
  - a. The property owner where the replacement trees will be planted and the responsible party, to transfer responsibility for the replacement tree under this article to the receiving party.
  - b. A site plan indicating the address of the property where the replacement tree will be planted, and a site plan indicating the location of the replacement tree.
  - c. The agreement may be structured to allow a non-profit association dedicated to tree advocacy or conservation of land to plant, manage, and monitor replacement tree.
  - d. Grant a conservation easement to the City that combine protected trees with a combined caliper equal to or exceeding the caliper for which mitigation is being requested.
  - e. The City Manager is authorized to accept and approve on behalf of the city a conservation easement to conserve trees and other natural features.
    1. Detailed baseline document prepared by a qualified professional describing the properties physical and biological condition, the general age of any tree stands, locations of easements and construction, and the

conservation values protected by the easement.

- f. Parcels identified through the Parks and Recreation Master plan as future potential open space may be donated to the City as approved by the City Manager.
- (b) Street Trees & Open Space. New developments incorporating Traditional Neighborhood Design with a minimum of 15% open space, Conventional Design with a minimum of 20% open space, or Conservation Design with a minimum of 25% open space and the provision of street trees shall be exempt from the mitigation applicable for protected tree loss within rights-of-way (ROW) areas. For purposes of this section the following apply:
  - a. Street trees shall be planted an average of thirty (30') feet on center, in minimum five-foot (5') wide planter strips located between the curb and minimum five-foot (5') wide sidewalk. In secondary areas without planter strips, trees shall be kept as close to the sidewalk to provide shade canopy, be aligned to visually frame the street, avoid sidewalk damage, and minimize water consumption. Street trees shall be of a limited selection of tree species, as listed in the City's Approved Plant List, to give them a unified and distinct image.
  - b. Tree species and placement shall be designed to avoid the use of a single species, to visually frame streets and to create an identifiable and distinct image.
  - c. Adequate sight distances must be maintained, in order to ensure safety.
  - d. Infrastructure shall be engineered and constructed to assure placement of street trees will not be injurious to utilities, vision clearance, or other public improvements.
  - e. Maintenance of "street trees" including adequate irrigation shall be provided by homeowners individually or shall be incorporated into the homeowner association (H.O.A.) and business development agreements.

**NOTE:**

- The above alternative mitigation strategies are meant to offer an alternative to paying into the Cities Tree Fund while offering other ways to meet mitigation without writing a check.
- The insertion also gives right-of-way, utilities and other public improvement tree planting and placement standards

**Sec. 14.908      Tree Planting Restrictions**

- (a) Overhead Lines. Any required replacement trees shall not be planted within an area such that the mature canopy of the selected tree will interfere with overhead utility lines.
- (b) Underground Utilities. Any required replacement trees or street trees shall not be planted within an area such that the mature root zone of the tree will interfere with underground public utility lines (including water lines, sewer lines, transmission lines or other utilities). Selection of tree species whose root systems are the least invasive to utilities may be considered.
- (c) Fire Hydrants. No trees shall be planted within ten (10') feet of a fire hydrant.
- (d) Street Corners. No street trees shall be planted closer than thirty-five feet (35') of any street corner, measured from the point of nearest intersecting curbs or curb-lines.

## **Sec. 14.909      Street Trees**

- (a) Acceptable Trees. The City shall maintain a list of acceptable trees for planting along streets, buffer yards, medians, within parks, or within other public areas. Trees other than those listed as acceptable may only be planted within said public areas upon approval of the Landscape Administrator.
- (b) Street Tree Spacing. The spacing of street trees will be in accordance with recommendations of the Landscape Administrator. Closer spacing or group plantings may be approved by the Landscape Administrator in unique situations.
- (c) Homeowner Associations (HOAs) or Property Owners. HOAs or property owners shall maintain a clearance above the street level of fourteen (14') feet, seven to eight feet (7' to 8') above sidewalks, and branching of trees out of the Visibility Triangle. Landscape maintenance of street trees to accommodate buses and service vehicles shall be incorporated into homeowner association and business agreements. HOAs will be responsible for replacement of trees along public rights-of-way within their neighborhood.
- (d) Public Tree Care. The City shall have the right to prune and maintain street trees, and park trees within the lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to insure public health, safety and welfare. The City may, by determination of the Director of Development Services or designee, remove, cause or order to be removed, any tree or part thereof which is in an unsafe condition; or which by reason of its nature maybe injurious to sewers, electric power lines, gas lines, water lines, vision clearance or other public improvements.

## **Sec. 14.910      Ordinance Enforcement**

- (a) Developers Agreement. No developer's agreement shall be approved which does not state that all construction activities shall meet the requirements of the tree preservation ordinance.
- (b) Building Permit. No building permit shall be issued unless the applicant signs an application or permit request which states that all construction activities shall meet the requirements of the tree preservation ordinance and guidelines.
- (c) Acceptance of Improvements. No acceptance of public improvements shall be authorized until all fines for violation of this ordinance have been paid to the City or otherwise disposed of through the Municipal Court. No acceptance of public improvements shall be authorized until all replacement trees have been planted, or appropriate payments have been made to the Reforestation Fund; however, the acceptance of public improvements may be authorized before all trees have been replaced provided a fiscal security deposit is posted in the amount equal to one and one-half times (1½ X) the prevailing rate for installed trees with a two (2) year guarantee, plus fifteen percent (15%) to cover administrative costs. Said deposit shall be forfeited if subject trees are not planted within 30 days of notification by the Landscape Administrator.
- (d) Certificate of Occupancy. No Certificate of Occupancy shall be issued until all fines for violations of this ordinance have been paid to the City or otherwise disposed of through the Municipal Court. No Certificate of Occupancy shall be issued until all replacement trees have been planted or appropriate payments have been made to the Reforestation Fund; however, that a Certificate of Occupancy may be granted before all trees have been replaced provided a fiscal security deposited is posted in the amount equal to one and one half times (1½) the prevailing rate for installed trees with a two (2) year guarantee, plus fifteen percent (15%) to cover administrative costs. Said deposit shall be forfeited if subject tree(s) are not planted within 30 days of notification by the Landscape Administrator.

## **Sec. 14.911      Violations**

In addition to any criminal penalty for violation of this Code, any person, firm, corporation, agent, city, state, or federal organization or employee thereof who violates the provisions of this ordinance where such violation results in the removal or damage to applicable trees shall be guilty of a misdemeanor and upon conviction shall be assessed a civil penalty of one hundred ninety-five dollars (\$195.00) per diameter inch of the tree(s) removed or damaged.

The unlawful injury, destruction or removal of each protected tree shall be considered a separate incident, and each incident subjects the violator to the penalty set forth herein per tree.

- (a) **Removal of Public Trees.** It shall be deemed a violation of this ordinance for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the City without first adhering to the requirements of this ordinance and procuring approval from the Landscape Administrator.
- (b) **Violations and Assessments.** Violations of this ordinance and non-payment of fines levied will be attached to property involved through standard legal methods.

Any person, firm, corporation, agent, city, state, or federal organization or employee thereof who violates a procedural requirement or who fails to comply with conditions established with a permit issued by the Landscape Administrator or his or her designee pursuant to this ordinance shall be guilty of a misdemeanor and upon conviction shall be fined five hundred dollars (\$500.00) per violation. Each procedural violation or failure to comply each day shall be considered a separate incident, and each incident subjects the violator to the penalty set forth herein.



DRAFT MINUTES  
PLANNING & ZONING COMMISSION MEETING OF JUNE 20, 2017



2. M17-07 Conduct Public Hearing and Consider making a recommendation to the City Council to amend and/or repeal and replace the current Tree Preservation Ordinance Article 14.900 and Landscape Standards Article 14.800.

Senior Planner Bester Munyaradzi read the staff report into the record.

**ACTING CHAIR OPENED THE PUBLIC HEARING**

Thomas Hillsman, 220 Spring Valley Road, Dallas, Texas, requested further clarification regarding Class 1 trees versus Unprotected trees.

Consulting Arborist Matt Grubishich, Director of Operations and Urban Forestry for the Texas Tree Foundation answered questions to the Commission.

**A MOTION WAS MADE BY COMMISSIONER JOHNSON AND SECONDED BY COMMISSIONER REED TO CLOSE THE PUBLIC HEARING.**

**AYES: HILL, JOHNSON, REED**

**NAYS:**

**THE MOTION CARRIED 3 to 0.**

**A MOTION WAS MADE BY COMMISSIONER REED AND SECONDED BY COMMISSIONER JOHNSON TO APPROVE 14.900 AND 14.800 AS SUBMITTED FOR REVIEW WITH THE REVISIONS TO THE LANGUAGE REGARDING 14.903(d) COMBINIG OPTION A AND OPTION D.**

**AYES: HILL, JOHNSON, REED**

**NAYS:**

**THE MOTION CARRIED 3 to 0.**



DRAFT MINUTES  
PLANNING & ZONING COMMISSION MEETING OF JUNE 6, 2017



**A MOTION WAS MADE BY COMMISSIONER AGUILAR AND SECONDED BY COMMISSIONER JOHNSON TO RECOMMEND APPROVAL OF THE PROPOSED AMENDMENTS TO ARTICLE 14.800 AS PRESENTED.**

**A MOTION WAS MADE BY COMMISSIONER AGUILAR AND SECONDED BY COMMISSIONER JOHNSON TO RECOMMEND APPROVAL OF THE PROPOSED AMENDMENTS TO ARTICLE 14.900 AS PRESENTED WITH THE FOLLOWING MODIFICATIONS:**

**14.901 OPTION B SELECTED WITH MODIFICATION TO THE LANGUAGE. IN THE DEFINITIONS SECTIONS, A MODIFICATION TO LANGUAGE REGARDING HERITAGE TREE AND HISTORIC TREE DEFINITIONS, SPECIMEN TREE WOULD BE MODIFICATED TO SAY THAT IN SUB-PART BE ALL TREES OF ALL SPECIES HAVING A MINIMUM DIAMETER OF 24 INCHES. UNPROTECTED TREES DEFINITIONS, CHOSE OPTION C WITH NOTATIONS FOR MESQUITE, EASTERN RED CEDAR. HACKBERRY/SUGARBERRY SPECIES FOR LESS THAN 24 INCHES IN DIAMETER NEED TO BE ADDED TO ALLOW THOSE TO BE UNPROTECTED.**

**14.903 AGRICULTURE OWNERS PORTION TO BE CONSIDERED AT OUR JUNE 20, 2017 MEETING.**

**14.904 TREE SURVEY SUBMITTAL REQUIREMENTS – REMOVAL OF REGISTERED SURVEYOR.**

**14.907(B)(2) AMEND PLANNING AND DEVELOPMENT SERVICES DIRECTOR TO READ PARKS AND RECREATION DIRECTOR.**

**14.907(B) REFERENCE TO PLACING REPLACEMENT TREES ON OTHER PRIVATE PROPERTY NEEDS TO BE REWORDED TO SAY OTHER SUITABLE LOCATIONS WHERE REPLACEMENT TREES BE REPLANTED.**

**14.907(C)(1) PAYMENTS IN LEUI OF REPLACEMENT CHOOSE OPTION FOR \$160**

**A MOTION WAS MADE BY COMMISSION AGUILLAR AND SECONDED BY COMMISSIONER JOHNSON TO POSTPONE THE FINAL CONSIDERATION REGARDING THE TREE PRESERVATION ORDINANCE PENDING FURTHER INFORMATION REGARDING THE AGRICULTURE PORTION OF THE CITY.**

**AYES: HILL, JOHNSON, AGUILAR  
NAYS:**

**THE MOTION CARRIED 3 to 0.**

## ARTICLE 14.900 TREE Conservation

### Sec. 14.901 General Provisions

(a) Purpose. The purpose of this ordinance is to promote site planning which furthers the preservation of trees and natural areas; to protect trees during construction; to facilitate site design and construction; contribute to the long-term viability of existing trees; and to prohibit clear cutting of trees. It is the further purpose of this ordinance to achieve the following broader objectives:

1. Prohibit the clearing of trees and natural areas.
2. Protect and increase the value of residential and commercial properties within the City as well as forest value.
3. Maintain and enhance a positive image, which will encourage further development in the City.
4. Protect healthy quality trees and promote, enhance the ecological, environmental and aesthetic qualities of the City in future development.
5. To encourage the increase of arboreal elements in design plans so as to improve both aesthetic and healthful conditions within the City.
6. To further the preservation of trees and natural areas by protecting them during the planning, site design, construction and maintenance phases of any residential or commercial development within the city of Lancaster, Texas.
7. To retain the optimum number of trees on any development site.

(b) Application: Article 14.900 applies to all property in the city except for:

1. Lots smaller than two acres in size that contain single-family or duplex uses in residential districts.
2. Lots in an overlay district or a planned development district with tree preservation regulations that vary appreciably from those in this article, as determined by the ~~landscape administrator~~ Director of Development Services or designee.

Option A:

(c) In this section, a tree removal property one acre or less, in a residential district is considered to be vacant when an application is made for a demolition permit for a single family or duplex structure.

Option B:

In this section, a tree removal property one acre or less, in a residential district is considered to be vacant when an application is made for a demolition permit for a single family or duplex structure.

1. If the developable area exceeds 70% of the lot then any inches removed beyond the 70% would be subject to mitigation.



- Is used for recreation, resource protection, amenity or buffer yard/greenbelt purposes.
- Is not an existing or future right-of-way (R.O.W.).
- Is not part of the roof of any building

**Tree, Preserved.** A protected tree shall be considered preserved only if a minimum of 75% of the critical root zone is maintained at undisturbed natural grade and not more than 25% of the canopy is removed due to building encroachment. The canopy shall retain its natural form and integrity.

**Protective Fencing.** Protective fencing shall be orange vinyl construction fencing or other material approved by ~~Landscape Administrator~~ **Director of Development Services** or designee with a four-foot (4') approximate height adequately supported.

**Pruning, Allowed.** Approved pruning of protected tree(s) by ~~Landscape Administrator~~ **Director of Development Services** or designee in cases where tree(s) must be strategically pruned to allow construction or demolition of a structure. When allowed, all pruning shall be in accordance with approved arboricultural technique and/or guidelines established by the ~~Landscape Administrator~~ **Director of Development Services** or designee.

**Pruning Permit.** Permit required for all utility, franchise and city projects. No fee is required.

**Thinning, Selective.** The removal of selected trees from within a forested area. The purpose of Selective Thinning is to improve the health and natural growth form of remaining trees or remove invasive and sometimes non-native species.

**Top Soil.** Top layer of soil native to the site.

**Traditional Neighborhood Design.** A development design or pattern that is characterized by a mixture of housing types and densities, a mixture of land uses including retail, office, and civic uses, reduced paving and street sizes, and that affords ease of pedestrian access. This design typically features a gridiron street pattern, short block lengths, narrow streets, reduced building setbacks from the street and close proximity of residential and non-residential buildings and uses.

**Tree.** Any self-supporting woody perennial plant, which will attain a trunk diameter of two inches (2") or more when measured at a point four and one-half feet (4.5') above ground level and normally an overall height of at least fifteen feet (15') at maturity, singular or multi-trunk. The diameter of a multi-trunk tree shall be determined by adding the total diameter of ½ diameter of each additional trunk to the diameter of the largest trunk.

**Tree Board.** The Tree and Landscape Advisory Board members shall be appointed by the City Council. The Board will meet as needed, to review and monitor the Tree Protection and Landscape Ordinances, and to advise the ~~Landscape Administrator~~ **Director of Development Services** or designee, Park Board, City Council, Planning & Zoning Commission and citizens.

**Tree Diversity.** A condition wherein no single species of tree or plant material comprises more than 30% of the cumulative total of plantings on a site or of replacement trees required due to mitigation and remediation.

**Tree, Heritage.** Any tree planted and related to the heritage of the community, individual or homestead as designated by City Council

**Tree, Historic.** Any tree that has been identified as having historical value (species, history, uniqueness) by City Council.

**Tree, Park.** Trees located in public parks and all areas owned by the City to which the public has free access to as a park.

**Tree, Protected.** A tree of any species that has a minimum diameter of six (6") that is not classified as unprotected in this article. The caliper of a multi-trunk tree shall be

determined by adding the total diameter of the largest trunk to one-half (1/2) diameter of each additional trunk (refer to ANSI).

**Tree, Specimen.** Means a healthy tree whose age, size, unique type, or natural character are of special importance to the city, and meets the following species and size requirements:

- (a) *Post oaks with a minimum diameter of 12 inches*
- (b) *Trees of the following species having a minimum diameter of 24 inches: American elm, cedar elm, eastern red cedar, osage orange, all other oaks, pecans, all walnut species.*

**Tree, Street.** Trees, shrubs, and all other woody vegetation on land lying between property lines planted at recommended intervals with consideration of visibility triangle on either side of all streets, avenues, right-of-ways or entrances to the City. Tree species and planting techniques shall be selected to create a unified image for the street, provide an effective canopy, avoid sidewalk damage and minimize water consumption.

**Tree, Understory.** A tree which the City has determined has significant positive characteristics worthy of preservation and that does not typically attain height greater than thirty (30') feet.

**Tree Survey.** The Tree Survey is the heart of the Tree Preservation Ordinance. Its purpose is not to penalize, but to aid in protecting our valuable natural resources during development and construction. The Tree Survey will also help determine the quantity of trees, if any, that may be removed or cannot be safely and adequately protected during the street utility, engineering/drainage, and construction phases of development.

**Tree Topping.** The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this ordinance at the determination of the ~~Landscape Administrator~~ **Director of Development Services** or designee.

**Tree, Canopy or Shade.** Canopy or Shade Tree means a species of tree which normally bears crown foliage no lower than six feet above ground level upon maturity.

Option A:

***Unprotected Tree means the following:***

- (a) Callery pear (all cultivars)
- (b) Chinaberry
- (c) Mesquite
- (d) Chinese Tallow
- (e) Hackberry & Sugarberry Species
- (f) Ilex Species (except for yaupon holly and Possumhaw holly)
- (g) Palm (all plants in *Palmae*)
- (h) Tree-of-heaven or *Ailanthus*
- (i) Other trees listed on the Texas A&M invasive plant list

Option B:

***Unprotected Tree means the following:***

of and included with the following:

- A. Preliminary Plat
- B. Re-plat
- C. Final Plat/Approval
- D. Site Plan Review
- E. Application for Building Permit
- F. Street, Utility, and drainage plans
- G. Concept Plan for a Planned Development

**(3) Detail**

- A. The Tree Survey shall be performed by a degreed urban forester, certified arborist, registered surveyor or qualified personnel as approved by the Director of Development Services or designee.
- B. The Tree Survey shall be accurate and include: Location, size (DBH), species, and trees with health problems (structural integrity, pest and/or pathogens) with a six-inch (6") or greater caliper (see definition). The Tree Survey information shall be compiled in a tabular format with each Tree identified by a number corresponding to a numbered tree on the site Plan.
- C. The entire parcel being proposed for development should be included in the Tree Survey.
- D. Once the Tree Survey has been accomplished and submitted to the City, all Trees on the Tree Survey shall be classified as Protected Trees, with the exception of those classified as Unprotected Tree species under this Ordinance.

(b) Commercial Development. Additional requirements for the tree survey on commercial tracts of

land shall require a complete tree survey, which shall include the following:

- (1) All areas within public R.O.W.,
- (2) Public utility or drainage easements shown on an approved Final Plat, and
- (3) Fire lanes, parking and drive areas, exclusive of the building pad, shall be subject to the tree protection and replacement requirements specified herein.

(c) Aerial Photos and Sampling. With the submittal of a concept plan or preliminary plat, whichever occurs first for property containing large, heavily wooded areas, the ~~Landscape Administrator~~ Director of Development Services or designee may, in lieu of a tree survey, authorize the submittal of an aerial photograph accompanied by a transparent plan of the development at the same scale as the photograph, showing all non-disturbance areas and proposed exemption areas where no trees will be critically altered.

For heavily wooded areas where development activity and disturbance is intended or likely, the ~~Landscape Administrator or designee~~ Director of Development Services or designee is authorized, but not required, to accept sampling of the property in lieu of a tree survey for all or any part of a property, provided that a tree survey of all other areas is submitted to the ~~Landscape Administrator~~ Director of Development Services or designee prior to any grading or construction. Said Sample or sampling techniques should be representational of the site or wooded area and should comprise at least 15% of the total site or wooded area and the sampling technique shall be approved by the Director of Development Services or designee prior to conducting the sample.

The ~~Landscape Administrator~~ Director of Development Services or designee may approve

- The above insertion is the new formula for tree mitigation based on the new tree class system.
- The formula gives certainty and clarifies tree mitigation requirements.

(b) Responsibility and Site Requirements. The Landscape Administrator or designee shall determine the agent responsible for replacement, the time frame for replacement and the location of the new trees. The replacement trees shall be located on the subject site whenever possible. However if this is not feasible, the Landscape Administrator or designee has the authority to allow the planting to take place on another property, including public property. If the Landscape Administrator approves the planting of replacement trees more than 30 days after the removal of protected trees, the applicant shall provide the Landscape Administrator with an affidavit that all replacement trees will be planted within six (6) months and maintained by the applicant for a minimum of two (2) years in good condition. Developers shall plant all the replacement trees identified on the Mitigation Plan. The Landscape Administrator or designee shall document the date of replacement trees on the reforestation plan and record for review of the 2-year commitment.

In as much as it is reasonable and feasible, replanting on the development or construction site will be encouraged in order to restore the original natural landscape character of the site.

- (1) The Director of Development Services or designee has the authority to reject any trees not meeting these standards.
- (2) One (1) 6-month extension may be approved by the Director of Development Services or designee due only to seasonal limitations that would make planting of trees impractical, and shall require an escrow deposit in an amount equal to 110% of the mitigated value.
- (3) The applicant shall be required to maintain the replacement trees in good condition for a minimum of two years. If a replacement tree dies or is damaged within the initial two- year period, the applicant shall replace it with a tree approved by the Director of Development Services or designee.

(c) Payment in Lieu of Replacement.

- (1) To the extent that tree replacement is not feasible, the Landscape Administrator or designee shall determine in accordance with the provisions provided herein, the amount of indemnification to be paid by the developer or other responsible party. Upon determination of indemnification, said payment shall be made to the City of Lancaster Reforestation and Natural Area Fund based on the following guidelines:

Option A:

- A. For Protected Trees, reparations will be made in the amount of one hundred ninety- five dollars (\$195.00) per one (1") inch DBH. The Director of Development Services or designee shall be authorized to reduce this amount in accordance with the following:

Option B: \$160.00

Option C: \$125.00

1. In cases when at least 50% of the required mitigation is provided by on-site or off-site tree planting, a reduction to not less than one hundred dollars (\$100) per one (1") inch DBH may be allowed.
2. A two (2") inch credit against mitigation and/or reparations may be authorized for

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

5.

**Meeting Date:** 06/26/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Healthy, Safe & Vibrant Community

**Submitted by:** Rona Stringfellow, Assistant City Manager

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#### **Agenda Caption:**

Discuss and consider an ordinance amending the Code of Ordinances by amending Chapter 14 Titled "Offenses and Additional Provisions", Article 14.05 Titled "Smoking in Public Places and Places of Employment" setting forth regulations prohibiting smoking in all workplaces and public places located within the City; providing regulations for electronic cigarettes and liquid nicotine; providing for prohibition of smoking in certain outdoor areas; providing for posting of signs; providing for penalties for business or establishments not to exceed two thousand dollars (\$2,000).

#### **Background:**

As prescribed in the City Council Rules and Procedures as amended in September 2016, Section D. City Council Agenda Process, Subsection 1.b. Mayor Marcus Knight, and Councilmembers Marco Mejia and Stanley Jaglowski requested an item be included on the agenda for the purpose of reviewing and discussing the smoking regulations that exist in the Lancaster Code of Ordinances. Currently, the Lancaster Code of Ordinances prohibits smoking in certain public areas.

On April 10, 2017, the City Council received a presentation from Smoke Free Texas affiliate Aschelle Morgan with the American Heart Association outlining the case for adopting a more comprehensive Smoke Free ordinance. City Council received ordinances from surrounding municipalities (DeSoto, Duncanville, Red Oak, Coppell and Waxahachie) for review during the City Council Work Session.

Council discussed and considered the item at the June 12, 2017 regular meeting. The item was tabled and placed on the June 19, 2017 work session for further discussion.

#### **Operational Considerations:**

The purpose of this item is to amend Chapter 14 *Offenses and Additional Provisions*, Article 14.05, *Smoking in Public Places and Places of Employment*.

The new ordinance will eliminate smoking in common areas, at city-sponsored events, city-owned facilities, places of employment and will not allow smoking in restaurants and certain outdoor areas. The intent of the ordinance is to reduce general public exposure to secondhand smoke and establish smoke free zones around city buildings and places of employment.

The City Attorney has provided a "draft" with options for the City Council to consider an ordinance inclusive of a cigar lounge that will not be considered a comprehensive ordinance under Smoke Free Texas criteria.

**Legal Considerations:**

The City Attorney has reviewed the ordinance and approved it as to form.

**Public Information Considerations:**

There are no public information requirements other than the requisite 72 hour notice as required by the Texas Open Meetings Act.

**Fiscal Impact:**

There are no fiscal requirements for the enactment of this ordinance.

**Options/Alternatives:**

1. Approve the ordinance, inclusive of cigar lounges.
2. Approve the ordinance, excluding cigar lounges.
2. Deny the ordinance.

**Recommendation:**

Staff is recommending approval of the ordinance, excluding cigar lounges if it is the desire of the Council to approve a comprehensive ordinance as recommended by Smoke Free Texas.

**Attachments**

Ordinance with Cigar Lounge Exception  
Ordinance without Cigar Lounge Exception  
City of Lancaster (current ordinance)  
Model Ordinance  
Model Ordinance Definitions

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## **ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 14 TITLED " OFFENSES AND ADDITIONAL PROVISIONS", ARTICLE 14.05 TITLED "SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT" SETTING FORTH REGULATIONS PROHIBITING SMOKING IN ALL WORKPLACES AND PUBLIC PLACES LOCATED WITHIN THE CITY; PROVIDING REGULATIONS FOR ELECTRONIC CIGARETTES AND LIQUID NICOTINE; PROVIDING FOR PROHIBITION OF SMOKING IN CERTAIN OUTDOOR AREAS; PROVIDING FOR POSTING OF SIGNS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES FOR BUSINESS OR ESTABLISHMENTS NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster does hereby find that secondhand smoke exposure causes disease and premature death in children and adults who do not smoke, and children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents cause respiratory symptoms and slows lung growth in their children; and

**WHEREAS**, exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; and

**WHEREAS**, there is no risk-free level of exposure to secondhand smoke; and

**WHEREAS**, establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U. S. Department of Health and Human Services); and

**WHEREAS**, Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer; and

**WHEREAS**, the Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen; and

**WHEREAS**, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

**WHEREAS**, a significant amount of secondhand smoke exposure occurs in the workplace; and

**WHEREAS**, residual tobacco contamination, or "third hand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings; and

**WHEREAS**, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e• cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic

chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent; and

**WHEREAS**, it has been determined that the effects of these substances are a health concern to the citizens of the City of Lancaster; and

**WHEREAS**, the City Council of the City of Lancaster, Texas, finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, DALLAS COUNTY, TEXAS, THAT:**

**SECTION 1.** The Code of Ordinances of the City of Lancaster, Texas, be and the same is hereby amended by amending Chapter 14, Offenses and Additional Provisions, Article 14.05, Smoking in Public Places and Places of Employment to read as follows:

**“CHAPTER 14  
OFFENSES AND ADDITIONAL PROVISIONS**

.....

**ARTICLE 14.05  
SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT**

**Sec. 14.05.001        Definitions**

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

“Administrative” means the area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges, or meeting rooms.

"Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

"Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

“Cigar Bar” means an establishment that derives more than eighty (80) percent of its quarterly gross revenue from the sale of only cigars for consumption on the premises by customers and the rental of on-site humidors. A cigar bar does not allow individuals under the age of 18 to enter the premises and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.

“Cigar Lounge” means a designated area within an establishment: (1) that is designated within the establishment as such; (2) that prohibits the entry of persons under the age of 18; (3) in which the air, gas, and smoke from the designated area is prevented from migrating into non-designated areas by a combination of floor to ceiling walls, partitions, glazing, doors or air curtain systems



and the maintenance of air pressure in the designated area sufficiently less than that in the other areas of the establishment to assure that air flows only from the other areas of the establishment to the designated area, and not otherwise; (4) in which the air, gas, and smoke from the designated area is either (a) exhausted or vented to the exterior of the building, or (b) treated and returned to the area via a system that yields an efficiency of not less than 95% removal of (0.3) micron particulates including tobacco smoke every 15 minutes before being returned to the designated area. In no event shall air drawn from designated smoking areas be returned to non-designated areas; and (5) that has been tested and approved by an agency approved by the City's Building Official or his or her designee to verify that the standards under this definition are met.

"City" means the City of Lancaster, Texas.

"Electronic or Digital Smoking Device" means any electronic or battery operated device delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

"Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

"Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

"Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

"Food Establishment" means an operation that stores, prepares, manufactures, packages, serves, vends, or otherwise provides food for human consumption such as restaurants, mobile vendors, and concession stands.

"Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to tobacco, shisha, or other plant matter.

"Hookah Bar" means an establishment that derives more than eighty(80) percent of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and the sale of accessories used for smoking shisha. A hookah lounge does not allow individuals under the age of eighteen (18) to enter the premises, and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.

"Patio" means an improved and defined unenclosed outside area associated with a food service establishment or bar used for purposes of dining or entertainment, provided that walkways are not to be considered patios; and further provided such establishment has a defined entrance at least ten feet from the designated smoking area.

“Physical Barrier” means a barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a smoke barrier, from floor to floor, or roof above, or combination thereof, including continuity through all concealed spaces, such as above suspended ceiling, interstitial structural and mechanical spaces. Transfer grilles, louvers and similar openings shall not be used in these partitions. Self-closing, tight fitting doors are permitted in such barriers.

"Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and temporary offices. A private residence is not a "place of employment" unless it issued as a child care, adult day care, or health care facility.

"Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.

"Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation, and which does not have employees, but instead has only volunteer or organization member-provided labor for its on-site operations. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

“Private Function” means the rental of a ballroom, private club, or other facility for the sole purpose of entertaining, private parties, events or other social functions other than a city facility that the general public is not able to attend.

“Public Event” means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers’ markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

"Public Place or Common Area" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

“Recreational Area” means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to amusement parks, athletic fields, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

"Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

“Retail and Service Establishment” means any establishment that sells goods or services to the general public. “Retail Electronic Smoking Device Store” means a sort used primarily for the sale of electronic or digital cigarettes or substances used in those or similar devices to produce inhalable

vapors and in which the sale of other products is incidental and where 80% of quarterly sales are from the sale of these devices and/or substances.

“Retail Tobacco Store or Tobacco Store” means a retail store where 75% of quarterly sales are from the sale of tobacco products and accessories, to include electronic or digital cigarettes, and in which the sale of other products is merely incidental.

“Second-Hand Smoke” means ambient smoke resulting from the act of smoking.

"Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

"Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.

"Smoke or Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

“Smoking Lounge” means a business establishment that is dedicated, in whole or in part to the selling or smoking of tobacco products, electronic cigarettes, or other substances, including but not limited to establishments known variously as cigar lounge, hookah lounge, or tobacco bars.

"Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

“Tobacco Product” means any tobacco, cigarette, cigar, pipe tobacco, water pipe, flavored tobacco, smokeless tobacco, snuff or any other form of tobacco, or any substance containing a detectable amount of nicotine which may be utilized for smoking, chewing, inhalation or other manner of ingestion or absorption.

#### **Sec.14.05.002            Application of Article to the City**

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Lancaster, as well as all outdoor property adjacent to such buildings and under the control of the City, shall be subject to the provisions of this Article.

#### **Sec.14.05.003            Prohibition of smoking in enclosed public places**

Smoking shall be prohibited in all enclosed areas of places of employment, except as expressly noted in Section 14.05.007 herein. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Smoking shall be prohibited in all public places within the City of Lancaster, including but not limited to, the following places:

A. Aquariums, galleries, libraries, and museums.

- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.
- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- Q. Retail store.
- R. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City.
- S. Service lines.
- T. Shopping malls.
- U. Sports arenas, including enclosed places in outdoor arenas.
- V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

**Sec. 14.05.004 Prohibition of smoking in enclosed places of employment**

- A. Smoking shall be prohibited in all enclosed areas of places of employment except as expressly noted in Section 14.05.007 herein. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this article and to all prospective employees upon their application for employment.

**Sec. 14.05.005 Prohibition of smoking in enclosed public access institutional residential facilities.**

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. At least ninety (90) percent of hotel and motel guest rooms rented.

**Sec. 14.05.006 Prohibition of smoking in outdoor areas**

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of fifteen (15) feet outside the primary entrance, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In all outdoor areas of stadiums, and amphitheaters. Smoking shall also be prohibited in, and within fifteen (15) feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- C. In all outdoor service lines, whether or not within the fifteen (15) feet from any outside entrances, operable windows or ventilations systems.
- D. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five (25) percent of the total outdoor common areas, which must be located at least fifteen (15) feet

outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

E. In and within twenty-five (25) feet of outdoor playgrounds.

#### **Sec. 14.05.007 Exemptions**

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 14.05.004 and 14.05.006:

- A. Private residences, unless used as a childcare, adult day care, or health care facility licensed by the State of Texas,
- B. Not more than ten (10) percent of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous. Smoke from these rooms must not infiltrate into areas where smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Outdoor areas of places of employment except those covered by the provisions of Section 14.05.006.
- D. Retail tobacco stores in freestanding physical facilities or with physical barriers between the retail tobacco store and any adjoining tenant or occupancy.
- E. Personal automobiles or motor vehicles.
- F. A hookah bar, cigar bar, cigar lounge or e-cigarettes lounge that was in existence prior to the effective date of this Ordinance.
- G. Those portions of a patio area of a restaurant or bar that meet the distance requirements of Sec. 14.05.006(A).
- H. Private clubs.
- I. Cigar Lounges.

#### **Sec. 14.05.008 Declaration of Establishment or Outdoor Area as Non-smoking**

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 14.05.009 is posted.

#### **Sec. 14.05.009 Posting of signs and removal of ashtrays**

The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one (1) sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

#### **Sec. 14.05.010 Nonretaliation; nonwaiver of rights**

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 14.05.015, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$2,000 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or

otherwise surrender any legal rights the employee may have against the employer or any other party.

**Sec. 14.05.011 Possession, purchase, consumption or receipt of electronic cigarettes or e-cigarettes and/or liquid nicotine by minors prohibited.**

- A. A person who is younger than eighteen (18) years of age commits an offense if the individual:
  - 1) Possesses, purchases, consumes or accepts an electronic cigarette, e-cigarette or liquid nicotine; or
  - 2) Falsely represents himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent or not actually proof of the individual's own age in order to obtain possession of, purchase or receive an electronic cigarette, e-cigarette or liquid nicotine.
- B. It shall be a defense to prosecution for a violation of this section if the individual younger than eighteen (18) years of age possessed the electronic cigarette, e-cigarette or liquid nicotine in the presence of:
  - 1) An adult parent, a guardian or a spouse of the individual; or
  - 2) An employer of the individual, if possession or receipt of the electronic cigarette, e-cigarette or liquid nicotine is required in the performance of the employee's duties as an employee.
- C. It shall also be a defense to prosecution for a violation of this section that the individual younger than eighteen (18) years of age is participating in an inspection or test of compliance in accordance with Section 161.088, Health and Safety Code.

**Sec. 14.05.012 Sale of electronic cigarette or e-cigarette or liquid nicotine to persons younger than eighteen (18) years of age prohibited; proof of age required.**

- A. A person or retailer commits an offense if the person or retailer with criminal negligence:
  - 1) Sells, gives or causes to be sold or given an electronic cigarette, e-cigarette or liquid nicotine to someone who is younger than eighteen (18) years of age; or Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to another person who intends to deliver it to someone who is younger than eighteen (18) years of age.
- B. If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which electronic cigarettes, e-cigarettes and/or liquid nicotine is/are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.
- C. It is a defense to prosecution under subsection (a) (1) that the person to whom the electronic cigarette, e-cigarette or liquid nicotine was sold, given or presented to the defendant apparently valid proof of identification.
- D. A proof of identification satisfies the requirements of subsection if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is eighteen (18) years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government.

**Sec. 14.05.013 Vendor assisted sales required; self-service merchandising prohibited**

- A. Except as provided by subsection (B), a retailer or other person may not:
  - 1) Offer electronic cigarettes, e-cigarettes or liquid nicotine for sale in a manner that permits a customer direct access to the electronic cigarettes, e-cigarettes or liquid nicotine;
  - 2) Offer for sale or display for sale electronic cigarettes, e-cigarettes or liquid nicotine by means of self-service merchandising; or
  - 3) Install or maintain an open display unit containing electronic cigarettes, e-cigarettes or liquid nicotine.
- B. It is a defense to prosecution under subsection (A), if:
  - 1) A facility or business is not open to persons younger than eighteen (18) years of age at any time;
  - 2) A facility or business is a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code; or
  - 3) An open display is located in an area that is inaccessible to customers.

**Sec. 14.05.014      Enforcement**

- A. This Article shall be enforced by the City's Police Department
- B. Notice of the provisions of this Article shall be given to all applicants for a Certificate of Occupancy in the City of Lancaster.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Fire Department, Fire Marshall's Office.
- D. The Health Department (Dallas County Health and Human Services), Fire Department, or their designee shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this article shall direct a person who is smoking in violation of this article to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to enforce this article.
- G. In addition to the remedies provided by the provision of this section, the Lancaster Police Department, a certified code official or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this article may apply for injunctive relief to enforce those provision in any court of competent jurisdiction.

**Sec. 14.05.015      Violations and Penalties**

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a Class C misdemeanor, punishable by a fine not exceeding two thousand dollars (\$2,000).
- B. Except as otherwise provided in Section 14.05.13(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding two thousand dollars (\$2,000).
- C. In addition to the fines established by this, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

**Sec. 14.05.016      Other Applicable Laws**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Sec. 14.05.017      Liberal Construction**

This Article shall be liberally construed so as to further its purposes.

**SECTION 2.** All ordinances of the City of Lancaster in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect. Nothing contained herein shall be construed to conflict with the *Texas Controlled Substance Act*, or any other state and/or federal law governing the same.

**SECTION 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**SECTION 4.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 5.** Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Lancaster, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

**SECTION 6.** This ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on the 26th day of June, 2017.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney



## **ORDINANCENO.**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 14 TITLED " OFFENSES AND ADDITIONAL PROVISIONS", ARTICLE 14.05 TITLED "SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT" SETTING FORTH REGULATIONS PROHIBITING SMOKING IN ALL WORKPLACES AND PUBLIC PLACES LOCATED WITHIN THE CITY; PROVIDING REGULATIONS FOR ELECTRONIC CIGARETTES AND LIQUID NICOTINE; PROVIDING FOR PROHIBITION OF SMOKING IN CERTAIN OUTDOOR AREAS; PROVIDING FOR POSTING OF SIGNS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES FOR BUSINESS OR ESTABLISHMENTS NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster does hereby find that secondhand smoke exposure causes disease and premature death in children and adults who do not smoke, and children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents cause respiratory symptoms and slows lung growth in their children; and

**WHEREAS**, exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; and

**WHEREAS**, there is no risk-free level of exposure to secondhand smoke; and

**WHEREAS**, establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U. S. Department of Health and Human Services); and

**WHEREAS**, Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer; and

**WHEREAS**, the Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen; and

**WHEREAS**, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke; and

**WHEREAS**, a significant amount of secondhand smoke exposure occurs in the workplace; and

**WHEREAS**, residual tobacco contamination, or "third hand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings; and

**WHEREAS**, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e• cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic

chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent; and

**WHEREAS**, it has been determined that the effects of these substances are a health concern to the citizens of the City of Lancaster; and

**WHEREAS**, the City Council of the City of Lancaster, Texas, finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, DALLAS COUNTY, TEXAS, THAT:**

**SECTION 1.** The Code of Ordinances of the City of Lancaster, Texas, be and the same is hereby amended by amending Chapter 14, Offenses and Additional Provisions, Article 14.05, Smoking in Public Places and Places of Employment to read as follows:

**“CHAPTER 14  
OFFENSES AND ADDITIONAL PROVISIONS**

.....

**ARTICLE 14.05  
SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT**

**Sec. 14.05.001 Definitions.**

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

“Administrative” means the area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges, or meeting rooms.

"Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

"Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

“Cigar Bar” means an establishment that derives more than eighty (80) percent of its quarterly gross revenue from the sale of only cigars for consumption on the premises by customers and the rental of on-site humidors. A cigar bar does not allow individuals under the age of 18 to enter the premises and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.

“City” means the City of Lancaster, Texas.

"Electronic or Digital Smoking Device" means any electronic or battery operated device delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

"Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

"Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

"Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

"Food Establishment" means an operation that stores, prepares, manufactures, packages, serves, vends, or otherwise provides food for human consumption such as restaurants, mobile vendors, and concession stands.

"Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to tobacco, shisha, or other plant matter.

"Hookah Bar" means an establishment that derives more than eighty(80) percent of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and the sale of accessories used for smoking shisha. A hookah lounge does not allow individuals under the age of eighteen (18) to enter the premises, and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.

"Patio" means an improved and defined unenclosed outside area associated with a food service establishment or bar used for purposes of dining or entertainment, provided that walkways are not to be considered patios; and further provided such establishment has a defined entrance at least ten feet from the designated smoking area.

"Physical Barrier" means a barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a smoke barrier, from floor to floor, or roof above, or combination thereof, including continuity through all concealed spaces, such as above suspended ceiling, interstitial structural and mechanical spaces. Transfer grilles, louvers and similar openings shall not be used in these partitions. Self-closing, tight fitting doors are permitted in such barriers.

"Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and temporary offices. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

"Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.

"Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is

operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation, and which does not have employees, but instead has only volunteer or organization member-provided labor for its on-site operations. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

“Private Function” means the rental of a ballroom, private club, or other facility for the sole purpose of entertaining, private parties, events or other social functions other than a city facility that the general public is not able to attend.

“Public Event” means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers’ markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

"Public Place or Common Area" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

“Recreational Area” means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to amusement parks, athletic fields, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

"Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

“Retail and Service Establishment” means any establishment that sells goods or services to the general public. “Retail Electronic Smoking Device Store” means a store used primarily for the sale of electronic or digital cigarettes or substances used in those or similar devices to produce inhalable vapors and in which the sale of other products is incidental and where 80% of quarterly sales are from the sale of these devices and/or substances.

“Retail Tobacco Store or Tobacco Store” means a retail store where 75% of quarterly sales are from the sale of tobacco products and accessories, to include electronic or digital cigarettes, and in which the sale of other products is merely incidental.

“Second-Hand Smoke” means ambient smoke resulting from the act of smoking.

"Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

"Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.

"Smoke or Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar,

cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

"Smoking Lounge" means a business establishment that is dedicated, in whole or in part to the selling or smoking of tobacco products, electronic cigarettes, or other substances, including but not limited to establishments known variously as cigar lounge, hookah lounge, or tobacco bars.

"Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

"Tobacco Product" means any tobacco, cigarette, cigar, pipe tobacco, water pipe, flavored tobacco, smokeless tobacco, snuff or any other form of tobacco, or any substance containing a detectable amount of nicotine which may be utilized for smoking, chewing, inhalation or other manner of ingestion or absorption.

#### **Sec.14.05.002            Application of Article to the City**

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Lancaster, as well as all outdoor property adjacent to such buildings and under the control of the City, shall be subject to the provisions of this Article.

#### **Sec.14.05.003            Prohibition of smoking in enclosed public places**

Smoking shall be prohibited in all enclosed areas of places of employment, except as expressly noted in Section 14.05.007 herein. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Smoking shall be prohibited in all public places within the City of Lancaster, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.

- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- Q. Retail store.
- R. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City.
- S. Service lines.
- T. Shopping malls.
- U. Sports arenas, including enclosed places in outdoor arenas.
- V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

**Sec. 14.05.004 Prohibition of smoking in enclosed places of employment**

- A. Smoking shall be prohibited in all enclosed areas of places of employment except as expressly noted in Section 14.05.007 herein. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this article and to all prospective employees upon their application for employment.

**Sec. 14.05.005 Prohibition of smoking in enclosed public access institutional residential facilities.**

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. At least ninety (90) percent of hotel and motel guest rooms rented.

**Sec. 14.05.006 Prohibition of smoking in outdoor areas**

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of fifteen (15) feet outside the primary entrance, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In all outdoor areas of stadiums, and amphitheaters. Smoking shall also be prohibited in, and within fifteen (15) feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- C. In all outdoor service lines, whether or not within the fifteen (15) feet from any outside entrances, operable windows or ventilations systems.
- D. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five (25) percent of the total outdoor common areas, which must be located at least fifteen (15) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.
- E. In and within twenty-five (25) feet of outdoor playgrounds.

**Sec. 14.05.007 Exemptions**

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 14.05.004 and 14.05.006:

- A. Private residences, unless used as a childcare, adult day care, or health care facility licensed by the State of Texas,
- B. Not more than ten (10) percent of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous. Smoke from these rooms must not infiltrate into areas where smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Outdoor areas of places of employment except those covered by the provisions of Section 14.05.006.
- D. Retail tobacco stores in freestanding physical facilities or with physical barriers between the

- retail tobacco store and any adjoining tenant or occupancy.
- E. Personal automobiles or motor vehicles.
- F. A hookah bar, cigar bar, cigar lounge or e-cigarettes lounge that was in existence prior to the effective date of this Ordinance.
- G. Those portions of a patio area of a restaurant or bar that meet the distance requirements of Sec. 14.05.006(A).
- H. Private clubs.

**Sec. 14.05.008 Declaration of Establishment or Outdoor Area as Non-smoking**

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 14.05.009 is posted.

**Sec. 14.05.009 Posting of signs and removal of ashtrays**

The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one (1) sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

**Sec. 14.05.010 Nonretaliation; nonwaiver of rights**

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 14.05.015, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$2,000 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

**Sec. 14.05.011 Possession, purchase, consumption or receipt of electronic cigarettes or e-cigarettes and/or liquid nicotine by minors prohibited.**

- A. A person who is younger than eighteen (18) years of age commits an offense if the individual:
  - 1) Possesses, purchases, consumes or accepts an electronic cigarette, e-cigarette or liquid nicotine; or
  - 2) Falsely represents himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent or not actually proof of the individual's own age in order to obtain possession of, purchase or receive an electronic cigarette, e-cigarette or liquid nicotine.
- B. It shall be a defense to prosecution for a violation of this section if the individual younger than eighteen (18) years of age possessed the electronic cigarette, e-cigarette or liquid nicotine in the presence of:
  - 1) An adult parent, a guardian or a spouse of the individual; or
  - 2) An employer of the individual, if possession or receipt of the electronic cigarette, e-cigarette or liquid nicotine is required in the performance of the employee's duties as an employee.
- C. It shall also be a defense to prosecution for a violation of this section that the individual younger than



eighteen (18) years of age is participating in an inspection or test of compliance in accordance with Section 161.088, Health and Safety Code.

**Sec. 14.05.012 Sale of electronic cigarette or e-cigarette or liquid nicotine to persons younger than eighteen (18) years of age prohibited; proof of age required.**

- A. A person or retailer commits an offense if the person or retailer with criminal negligence:
  - 1) Sells, gives or causes to be sold or given an electronic cigarette, e-cigarette or liquid nicotine to someone who is younger than eighteen (18) years of age; or Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to another person who intends to deliver it to someone who is younger than eighteen (18) years of age.
- B. If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which electronic cigarettes, e-cigarettes and/or liquid nicotine is/are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.
- C. It is a defense to prosecution under subsection (a) (1) that the person to whom the electronic cigarette, e-cigarette or liquid nicotine was sold, given or presented to the defendant apparently valid proof of identification.
- D. A proof of identification satisfies the requirements of subsection if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is eighteen (18) years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government.

**Sec. 14.05.013 Vendor assisted sales required; self-service merchandising prohibited**

- A. Except as provided by subsection (B), a retailer or other person may not:
  - 1) Offer electronic cigarettes, e-cigarettes or liquid nicotine for sale in a manner that permits a customer direct access to the electronic cigarettes, e-cigarettes or liquid nicotine;
  - 2) Offer for sale or display for sale electronic cigarettes, e-cigarettes or liquid nicotine by means of self-service merchandising; or
  - 3) Install or maintain an open display unit containing electronic cigarettes, e-cigarettes or liquid nicotine.
- B. It is a defense to prosecution under subsection (A), if:
  - 1) A facility or business is not open to persons younger than eighteen (18) years of age at any time;
  - 2) A facility or business is a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code; or
  - 3) An open display is located in an area that is inaccessible to customers.

**Sec. 14.05.014 Enforcement**

- A. This Article shall be enforced by the City's Police Department
- B. Notice of the provisions of this Article shall be given to all applicants for a Certificate of Occupancy in the City of Lancaster.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Fire Department, Fire Marshall's Office.
- D. The Health Department (Dallas County Health and Human Services), Fire Department, or their designee shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this article shall direct a person who is smoking in violation of this article to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to enforce this article.
- G. In addition to the remedies provided by the provision of this section, the Lancaster Police

Department, a certified code official or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this article may apply for injunctive relief to enforce those provision in any court of competent jurisdiction.

#### **Sec. 14.05.015 Violations and Penalties**

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a Class C misdemeanor, punishable by a fine not exceeding two thousand dollars (\$2,000).
- B. Except as otherwise provided in Section 14.05.13(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding two thousand dollars (\$2,000).
- C. In addition to the fines established by this, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

#### **Sec. 14.05.016 Other Applicable Laws**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

#### **Sec. 14.05.017 Liberal Construction**

This Article shall be liberally construed so as to further its purposes.

**SECTION 2.** All ordinances of the City of Lancaster in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect. Nothing contained herein shall be construed to conflict with the *Texas Controlled Substance Act*, or any other state and/or federal law governing the same.

**SECTION 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**SECTION 4.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 5.** Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Lancaster, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

**SECTION 6.** This ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on the 26th day

of June, 2017.

**ATTEST:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED:**

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

**CHAPTER 14 OFFENSES AND ADDITIONAL PROVISIONS****ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\*****ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\*****Sec. 14.05.001 Definitions**

In this article:

Administrative area. The area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges or meeting rooms.

Director. The director of the department designated by the city manager to enforce and administer this article, or the director's designated representative.

Food products establishment. Any operation defined as such in this code, except private clubs whose facilities are not open to the general public. Private club shall have the definition ascribed to the term by the development code, as amended, except that the smoking prohibition provided in this article shall apply to a public food products establishment which also operates under a private club registration permit issued by the state alcoholic beverage commission under the provisions of chapter 32 of the Texas Alcoholic Beverage Code.

Hospital. Any institution that provides medical, surgical and overnight facilities for patients.

Public service area. Any area to which the general public routinely has access for municipal services or which is designated a public service area in a written policy prepared in compliance with this article.

Retail and service establishments. Any establishment which sells goods or services to the general public.

(2002 Code, sec. 8.501)

**ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\*****Sec. 14.05.002 Penalty**

Any person, firm or corporation who violates any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof in the municipal court shall be subject to a fine in accordance with the general penalty provision found in section 1.01.009 of this code. (2002 Code, sec. 8.506)

**ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT\***

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**Sec. 14.05.003 Smoking prohibited in certain public areas**

(a) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product in any of the following indoor or enclosed areas:

- (1) A public primary or secondary school, other than in a lounge or restroom designated expressly for the use of teachers and/or school administrators;
- (2) A public library or museum;
- (3) Hearing rooms, conference rooms, meeting rooms or any public service area of any facility owned, operated or managed by the city in which public business is conducted, when the public business requires or provides an opportunity for direct participation or observation by the general public;
- (4) Every publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event, in all areas except either in that area commonly known as the lobby, or in areas not open to the public;
- (5) An elevator used by the public; or
- (6) Any retail or service establishment serving the general public, including but not limited to any department store, grocery store or drugstore.

(b) The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a conspicuous sign at the main entrance to the establishment which shall contain the words "No Smoking, City of Lancaster Ordinance No. 15-88."

(c) It shall be a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited and that an offense is punishable by a fine in accordance with the general penalty provision found in section 1.01.009 of this code.

(d) It shall also be a defense to prosecution under this section that the facilities for the extinguishment of smoking materials were not located within the conveyance or public place, or within twenty (20) feet of the entrance to the public place within which the offense takes place.

(2002 Code, sec. 8.502)

<b>ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT*</b>
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**Sec. 14.05.004 Food products establishments**

(a) A food products establishment which has indoor or enclosed dining areas shall provide separate indoor or enclosed dining areas for smoking and nonsmoking patrons.

(b) A nonsmoking area must:

- (1) Be separated, where feasible, from smoking areas by a minimum of four (4) feet of contiguous floor space;
- (2) Be ventilated, where feasible, and situated so that air from the smoking area is not drawn into or across the nonsmoking area;
- (3) Be clearly designated by appropriate signs visible to patrons within the dining area indicating that the area is designated nonsmoking;
- (4) Have ashtrays or other suitable containers for extinguishing smoking materials at the perimeter of the nonsmoking area; and
- (5) Consist of not less than two (2) contiguous tables for the serving of customers.

(c) Each food products establishment which has a dining area shall have signs at the establishment's entrance indicating that nonsmoking seating is available.

(d) Non-dining areas of any food products establishment affected by this section to which patrons have general access; excluding restrooms but including food order areas, food service areas and cashier areas, shall be designated as nonsmoking areas.

(e) It is a defense to prosecution under this section that the food products establishment is:

- (1) An establishment which has indoor seating arrangements for less than fifty (50) patrons;
- (2) A physically separated bar area of a food products establishment otherwise regulated.

(f) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product in an area of a food products establishment designated as nonsmoking in accordance with the provisions of this section.

(2002 Code, sec. 8.503)

ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT*
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#### **Sec. 14.05.005 Smoking in the workplace**

Notwithstanding the provisions of this article, any employer may designate any workplace or portion thereof as a nonsmoking area. Any employer who chooses to designate any workplace or portion thereof as a nonsmoking area shall:

- (1) Adopt, implement and maintain a written smoking policy, which shall be communicated to all employees at least three (3) weeks prior to its adoption;
- (2) Prominently display reasonably sized notices that smoking is prohibited; and

- (3) Provide facilities in sufficient numbers and at such locations to be readily accessible for the extinguishment of smoking materials.

(2002 Code, sec. 8.504)

ARTICLE 14.05 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT*
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**Sec. 14.05.006 Hospitals and health care facilities**

(a) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product in any public area of a health care facility or hospital.

(b) Every hospital shall:

- (1) Allow all patients, prior to elective admission, to choose to be in a nonsmoking patient room; and
- (2) Require that employees or visitors obtain express approval from all patients in a patient room prior to smoking.

(2002 Code, sec. 8.505)



# SMOKE★FREE TEXAS

[www.smokefreetexas.org](http://www.smokefreetexas.org)

## Model Ordinance Prohibiting Smoking in All Indoor Workplaces and Public Places (100% Smokefree)

### **Sec. 1000. Title**

This Article shall be known as the \_\_\_\_\_ [name of City or County] Smoke-Free Air Ordinance of \_\_\_\_\_ [year].

### **Sec. 1001. Findings and Intent**

The \_\_\_\_\_ [City or County Governing Body] does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry.<sup>1</sup> According to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.<sup>2</sup> According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.<sup>3</sup>

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.<sup>4</sup>

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen.<sup>5</sup>

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death.<sup>6</sup>

There is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke.<sup>7</sup>

In reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smokefree laws, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smokefree laws reduce heart attacks.<sup>8</sup>

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.<sup>9</sup>

Studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smokefree law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect.<sup>10</sup> After the implementation of Ontario, Canada's Smokefree Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%.<sup>11</sup>

Smokefree indoor air laws result in a significant reduction in fine particulate matter and improved air quality. A Grand Rapids, Michigan study that monitored six restaurants before and after implementation of the state's smokefree air law found that PM2.5 fine particulate matter was reduced by 92 percent after the law went into effect, indicating that the vast majority of indoor air pollution in all six venues was due to secondhand smoke. The results in Grand Rapids were consistent with results in Wilmington, Delaware; Boston, Massachusetts; and Western New York.<sup>12</sup>

Following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos."<sup>13</sup> A subsequent study in Nevada, whose Clean Indoor Air Act permits smoking in designated areas of casinos, bars, and taverns, indicates that strong 100% smokefree laws are the only effective way to protect indoor air quality. The study sampled the air quality in 15 casino gaming areas and corresponding nonsmoking areas, and the results indicated that the Clean Indoor Air Act failed to protect air quality in the nonsmoking areas, including children-friendly areas.<sup>14</sup>

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.<sup>15</sup> The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.<sup>16</sup>

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking.<sup>17</sup>

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety.<sup>18</sup>

Residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds.<sup>19</sup> Tobacco residue is noticeably present in dust throughout places where smoking has occurred.<sup>20</sup> Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.<sup>21</sup> The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and air 3EP are elevated in nonsmoking and smoking rooms of hotels that allow smoking. Air nicotine levels in smoking rooms are significantly higher than those in nonsmoking rooms of hotels that do and do not completely prohibit smoking. Hallway surfaces outside of smoking rooms also show higher levels of nicotine than those outside of nonsmoking rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens.<sup>22</sup>

Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent."<sup>23</sup> According to a more recent study, electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.<sup>24</sup> Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where

smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.<sup>25</sup>

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.<sup>26</sup>

There is no legal or constitutional "right to smoke."<sup>27</sup> Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.<sup>28</sup>

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.<sup>29</sup>

The smoking of tobacco, hookahs, or marijuana and the use of electronic cigarettes are forms of air pollution and constitute both a danger to health and a material public nuisance.

Accordingly, the \_\_\_\_\_ [City or County Governing Body] finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

## **Sec. 1002. Definitions**

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- E. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- G. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- H. "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and temporary offices. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- I. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on [City or County] grounds.
- J. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- K. "Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

- L. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- M. "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- N. "Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- O. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.
- P. "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

### **Sec. 1003. Application of Article to [City-Owned or County-Owned] Facilities and Property**

All enclosed areas, including buildings and vehicles owned, leased, or operated by the \_\_\_\_\_ [City or County] of \_\_\_\_\_, as well as all outdoor property adjacent to such buildings and under the control of the \_\_\_\_\_ [City or County], shall be subject to the provisions of this Article.

### **Sec. 1004. Prohibition of Smoking in Enclosed Places of Employment**

Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

### **Sec. 1005. Prohibition of Smoking in Public Places**

Smoking shall be prohibited in all public places within the \_\_\_\_\_ [City or County] of \_\_\_\_\_, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gambling facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.
- O. Public transportation vehicles, including buses and taxicabs, under the authority of the \_\_\_\_\_ [City or County], and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the \_\_\_\_\_ [City or County] or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the \_\_\_\_\_ [City or County].



- T. Service lines.
- U. Shopping malls.
- V. Sports arenas, including enclosed places in outdoor arenas.
- W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

#### **Sec. 1006. Prohibition of Smoking in Private Clubs**

Smoking shall be prohibited in all private clubs.

#### **Sec. 1007. Prohibition of Smoking in Enclosed Residential Facilities**

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. All hotel and motel guest rooms.

#### **Sec. 1008. Prohibition of Smoking in Outdoor Public Places**

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of \_\_\_\_\_ [*recommended 15-25*] feet outside the primary entrance, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In, and within \_\_\_\_\_ [*recommended 15-25*] feet of, all outdoor playgrounds.

#### **Sec. 1009. Where Smoking Not Regulated**

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

#### **Sec. 1010. Declaration of Establishment or Outdoor Area as Nonsmoking**

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1012(A) is posted.



### **Sec. 1011. Posting of Signs and Removal of Ashtrays**

The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post "No Smoking" signs in appropriate locations as determined by the \_\_\_\_\_ [Department of Health or City Manager or County Administrator] or an authorized designee.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

### **Sec. 1012. Nonretaliation; Nonwaiver of Rights**

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 1015, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

### **Sec. 1013. Enforcement**

- A. This Article shall be enforced by the \_\_\_\_\_ [Department of Health or City Manager or County Administrator] or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the \_\_\_\_\_ [City or County] of \_\_\_\_\_.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the \_\_\_\_\_ [Department of Health or City Manager or County Administrator].
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

- E. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the \_\_\_\_\_ [Department of Health or City Manager or County Administrator] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

#### **Sec. 1014. Violations and Penalties**

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 1013(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
  - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
  - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
  - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the \_\_\_\_\_ [Department of Health or City Manager or County Administrator] by restraining order, preliminary and permanent injunction, or other means provided for by law, and the \_\_\_\_\_ [City or County] may take action to recover the costs of the nuisance abatement.
- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

### **Sec. 1015. Public Education**

The \_\_\_\_\_ [Department of Health or City Manager or County Administrator] shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

### **Sec. 1016. Governmental Agency Cooperation**

The \_\_\_\_\_ [City Manager or County Administrator] shall annually request other governmental and educational agencies having facilities within the \_\_\_\_\_ [City or County] to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, \_\_\_\_\_ [County or City], and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

### **Sec. 1017. Other Applicable Laws**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

### **Sec. 1018. Liberal Construction**

This Article shall be liberally construed so as to further its purposes.

### **Sec. 1019. Severability**

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

### **Sec. 1020. Effective Date**

This Article shall be effective thirty (30) days from and after the date of its adoption.

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## **Model Cigar Bar and other related definitions & exemption language**

### **Definitions**

- A. "Cigar Bar" means an establishment that derives more than eighty (80) percent of its quarterly gross revenue from the sale of only cigars for consumption on the premises by customers and the rental of on-site humidors. A cigar bar does not allow individuals under the age of 18 to enter the premises and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.
- B. "Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
- C. "Hookah Bar" means an establishment that derives more than eighty (80) percent of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and accessories used for smoking shisha (not any other tobacco products). A hookah bar does not allow individuals under the age of 18 to enter the premises and does not have a permit or license to sell alcoholic beverages, but may serve food and nonalcoholic beverages for consumption on the premises by customers.
- D. Retail Electronic Smoking Device Store means any commercial establishment that derives at least eighty (80) percent of its annual gross receipts from the sale of electronic smoking devices and accessories.
- E. Retail Tobacco Store means any commercial establishment that derives at least eighty (80) percent of its annual gross receipts from the sale of tobacco and tobacco accessories. A tobacco retail store does not allow individuals under the age of 18 to enter the premises, and does not sell any food or beverages.

### **Model Cigar Bar Exemption Language**

- (1) Cigar bars as defined herein that were in business and operating within the city limits of the City as of the date of adoption of this ordinance, met as of the date of adoption of this ordinance and continuously meet the applicable definitions herein, and do not expand in size or change locations after the date of adoption of this ordinance, but only for consumption on the premises of shisha or cigars sold by the business. Any such establishment that ceases to operate as such for longer than thirty (30) consecutive days or ceases to meet the definition of the same type of establishment at any time after the adoption of this ordinance shall cease to be exempt from the requirements of this Article.

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

6.

**Meeting Date:** 06/26/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Professional & Committed City Workforce

**Submitted by:** Sorangel O. Arenas, City Secretary

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### **Agenda Caption:**

The City Council shall convene into closed executive session pursuant to Section §551.071(1)(A) to receive information on the following pending or contemplated litigation matters:

- a. Cause No. DC-17-04372, Lakacia Turner v. Lancaster Police Department, et. al, filed in the 193rd District Court of Dallas County, Texas.
- b. Correspondence from CTMGT Bear Creek, LLC requesting a Tex. Loc. Gov't Code § 212.904 appeal of any municipal infrastructure cost proportionality determinations incidental to the Bear Creek Subdivision Phase 3 Preliminary Plat.

### **Background:**

Executive Session matters.

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

7.

**Meeting Date:** 06/26/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Professional & Committed City Workforce

**Submitted by:** Sorangel O. Arenas, City Secretary

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#### **Agenda Caption:**

Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

#### **Background:**

This agenda item allows City Council to take action necessary, if any, on item(s) discussed in Executive Session.